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Situation of human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, in accordance with General Assembly resolutions 66/164 and 68/181 and Human Rights Council resolutions 16/5 and 25/18.

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Report of the Special Rapporteur on the situation of human rights defenders

Summary

The present report highlights the situation of environmental human rights defenders. In his report, the Special Rapporteur raises alarm about the increasing and intensifying violence against them. He makes recommendations to various stakeholders in order to reverse this worrying trend and to empower and protect those defenders, for the sake of our common environment and sustainable development.

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I. Introduction

1. The present report is dedicated to the heroic activists who have braved the dangers facing them and defended the rights of their communities to a safe and healthy environment, to a future with dignity and respect, and to their traditional land and livelihood. They spoke truth to power, and were murdered in cold blood. This happened in Honduras, where the renowned environmental campaigner Berta Cáceres and her colleague Nelson García from the Civic Council of Popular and Indigenous Organizations of Honduras were slain one after another in March 2016, for having opposed hydroelectric dams in the sacred Gualcarque river basin.[1] The tragedy is common in the Philippines, where indigenous defenders of the Manobo community in Mindanao were murdered in September 2015.[2] Attacks and killings of environmental and indigenous rights defenders in Mato Grosso Do Sul, Brazil, have continued with impunity.[3] In South Africa, prominent defender Sikhosiphi Rhadebe was assassinated at his home on 22 March, after reportedly being put on a "hit list" of opponents to mining operations in Xolobeni.[4] These are not isolated cases. On average, three environmental activists were murdered each week in 2015.[5]

2. The present report raises alarm about the shocking rate of killings, as well as threats, harassment and intimidation, of environmental human rights defenders. The Special Rapporteur wishes to convey to Member States that the killing of environmental human rights defenders is only the tip of the iceberg. He calls on States to address the disturbing trend of increasing violence, intimidation, harassment and demonization of the brave individuals and groups who strive to defend and promote environmental and land rights. His observations and recommendations aim to elicit greater recognition of the role of environmental human rights defenders, afford them better protection and empower them to continue their legitimate human rights activities.

3. It is the duty of the State to respect the right of everyone to promote and protect a safe, clean, healthy and sustainable environment, necessary for the enjoyment of a vast range of human rights. The State has a parallel duty to protect environmental human rights defenders from violations committed by both State and non-State actors. Nevertheless, international human rights law makes it clear that business enterprises, the media and other non-State actors are obliged to respect human rights obligations and refrain from contributing to or committing violations. The Special Rapporteur is therefore seriously concerned about the worrying numbers of killings and violence that, without doubt, underestimate the true extent of threats and risks facing environmental human rights defenders.

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[1] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19864&LangID=E; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18481&LangID=E; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19805&LangID=E.

[2] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16481.

[3] Communication to Brazil (BRA 7/2015) dated 9 October 2015, available from https://spdb.ohchr.org/hrdb/31st/public_-_UA_Brazil_09.10.15_(7.2015).pdf; end of mission statement by the Special Rapporteur on the rights of indigenous peoples on her visit to Brazil, 17 March 2016, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18498&LangID=E.

[4] Communication to South Africa (ZAF1/2016) dated 31 May 2016.

[5] Global Witness, *On Dangerous Ground* (2016). Available from www.globalwitness.org/fr/reports/dangerous-ground/.

4. Protecting environmental human rights defenders is crucial to the protection of the environment and the human rights that depend on it. In 2015, the international community reached a consensus on the 2030 Agenda for Sustainable Development, with a set of new goals as a road map for a more sustainable, prosperous and equitable future. A number of those goals are directly or indirectly related to the environment and land use. Such a future, and those goals, are doomed to failure if the individuals and groups on the frontline of defending sustainable development are not protected at the national, regional and international levels.

5. The Special Rapporteur stresses that it is the responsibility of the international community and of States to empower and protect environmental human rights defenders, especially as the 2030 Agenda has engendered high hopes among civil society. He hopes that his report will guide all stakeholders in their future efforts to implement these and other important objectives, while remembering that empowering environmental human rights defenders is crucial to the protection of our environment and all other related human rights.

Methodology

6. In his report the Special Rapporteur draws from primary and secondary sources of information. In order to consult a broad range of actors, the Special Rapporteur launched a public call for inputs on the subject of environmental human rights defenders,[6] seeking submissions on a set of questions touching on the threats and challenges facing them as a result of their work; root causes underlying those threats and challenges; specific actors playing a role in that connection; and effective measures taken to overcome those challenges. As a result, he received 30 submissions from States, civil society organizations and human rights defenders. He has also drawn from seven regional consultations with defenders (see A/70/217), as well as from communications that he has sent to States on alleged violations against individual or groups of environmental human rights defenders.[7] He has also reviewed the wealth of reports on the subject issued by civil society. Finally, the Special Rapporteur convened an expert meeting on the situation of environmental human rights defenders on 4 and 5 July 2016 in Florence, Italy.

II. Normative framework

7. For the purposes of the present report, the term "environmental human rights defenders" refers to individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna. Land and environmental rights are interlinked and are often inseparable. As a result, the two broad categories of defenders advocating for the environment and for land rights are often characterized as "land and environmental rights defenders", "environmental rights defenders", or just "environmental activists". The report defines those defenders through the inclusive term "environmental human rights defenders", whose

[6] See www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Environmental.aspx.

[7] Communications can be found in the annual reports of the Special Rapporteur, available from www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx, or communications reports of special procedures, available from www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

rights to exercise such fundamental freedoms as the rights to expression, privacy, association and peaceful assembly have been enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. With regard to exercising the right to protect environmental and land rights, article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms — the Declaration on Human Rights Defenders — further holds that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels".

8. Environmental human rights defenders are identified above all by what they do. They are characterized as such through their actions to protect environmental and land rights. Although they may work as journalists, activists or lawyers who expose and oppose environmental destruction or land grabbing, they are often ordinary people living in remote villages, forests or mountains, who may not even be aware that they are acting as environmental human rights defenders. In many other cases, they are indigenous leaders or community members who defend their traditional lands against the harms of large-scale projects such as mining and dams.

9. Owing to word limitations on documents and the vast literature on the subject, the Special Rapporteur will not delve here into a comprehensive analysis of diverse international human rights norms relevant to the protection of environmental human rights defenders; he will only outline the applicable normative framework. With regard to the sphere of activities of environmental human rights defenders, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights share a common article 1, which refers to the right of self-determination, by virtue of which all peoples freely determine their political status, pursue their economic, social and cultural development, and dispose of their natural wealth and resources. The Declaration recognizes the legitimacy of the defence of environmental rights by acknowledging the "valuable work" of human rights defenders in the elimination of violations, including those resulting from "the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources".

10. The mandate has consistently held that the protection accorded to defenders by the Declaration is not dependant on whether the focus of their work is on civil and political or economic, social and cultural rights (see, for example, A/HRC/4/37, paras. 27-30, and A/HRC/19/55, paras. 61-63). As recently as March 2016, the Human Rights Council adopted resolution 31/32 on protecting defenders addressing economic, social and cultural rights, reaffirming the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues and development.

11. The State's primary responsibility to protect the rights to life, liberty and security of person is enshrined in article 3 of the Universal Declaration and in articles 6 (1) and 9 (1) of the International Covenant on Civil and Political Rights. This obligation is further emphasized in the Declaration on Human Rights Defenders, in particular in its articles 2, 9 and 12. Both negative and positive aspects are included: on the one hand, States must refrain from violating the rights

of human rights defenders; on the other hand, they should act with due diligence to prevent and investigate human rights violations and bring the perpetrators to justice.

12. The State's obligation to provide an effective remedy for violations is affirmed in article 2 (3) (a) of the International Covenant. Article 9 of the Declaration further holds that defenders have the right to benefit from an effective remedy and to be protected in the event of violations. Prompt and impartial investigations into alleged violations, prosecution of the perpetrators regardless of their status, provision of redress, including appropriate compensation to victims, and enforcement of the decisions or judgments are fundamental in order to ensure the right to an effective remedy. Failure to take these actions leads to further attacks against defenders, resulting in a climate of impunity (see A/58/380, para. 73, and A/65/223, para. 44).

13. The Special Rapporteur underlines the importance of the right of environmental human rights defenders to participation in the conduct of public affairs and decision-making, enshrined in article 25 (a) of the International Covenant and article 8 of the Declaration. That right is said to include the right to submit to the relevant governmental agencies criticism and proposals for improving their functioning and to draw attention to any aspect of their work that hinders or impedes the realization of human rights. The Rio Declaration on Environment and Development, as well as other prominent commitments, reaffirmed the importance of public participation.

14. International instruments protecting the rights of specific populations also guarantee their right to participation. The obligation to consult, with the objective of obtaining the free, prior and informed consent of indigenous peoples concerning legislative or administrative measures that may affect them directly, is established in the United Nations Declaration on the Rights of Indigenous Peoples (arts. 18 and 27) and in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO). Furthermore, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides for the right of minorities to participation (arts. 2 and 4).

15. Transparency and access to information are directly linked to the right to seek, obtain and impart information, which is stated in article 19 of the International Covenant, as well as article 6 of the Declaration on Human Rights Defenders. Article 14 of the Declaration provides that States have the responsibility to take legislative, judicial and administrative measures to promote the understanding by all persons under their jurisdiction of their human rights, including through the publication and widespread availability of laws and regulations.

16. In their reports, previous Special Rapporteurs have stated that the key elements of guaranteeing a safe and enabling environment for human rights defenders, including environmental human rights defender, are adoption of a conducive legal and institutional framework; the fight against impunity and access to justice; establishment of a strong national human rights institution; effective protection policies and mechanisms; respect and support by non-State actors of the work of defenders; a robust community of defenders; and others (see, for example, A/HRC/25/55).

17. In his 2013 report, the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/25/53) outlined human rights obligations relating to the

environment drawn from international agreements and the bodies charged with interpreting them. The threefold duties include: (a) procedural obligations of States to assess environmental impacts on human rights and to make environmental information public; to facilitate participation in environmental decision-making; and to provide access to remedies for environmental harm; (b) substantive obligations of States to adopt legal and institutional frameworks that protect against environmental harm, including harm caused by private actors; and (c) non-discrimination and other obligations of States relating to the protection of groups in vulnerable situations, including women, children and indigenous peoples.

18. While States are bound by international human rights law, non-State actors are required to respect human rights, including the right to defend environmental and land rights. Transnational corporations and other business enterprises must respect human rights, as set out in the Guiding Principles on Business and Human Rights. The Guiding Principles aim to implement the United Nations "Protect, Respect and Remedy" Framework, which rests on three pillars: the State duty to protect against human rights abuses by third parties, including businesses; the corporate responsibility to respect human rights; and the need for access to an effective remedy for victims of business-related human rights abuses (see A/HRC/17/31, para. 6).

19. Furthermore, the Guiding Principles require that companies identify and assess any actual or potential adverse human rights impacts through meaningful consultation with potentially affected groups, as an integral part of their responsibility to respect human rights. Such impact assessments should be carried out not only at the start of a new project, but also throughout the life cycle of the project, prior to any significant changes in the operating context (see A/68/262, para. 44).

20. The Special Rapporteur supports Human Rights Council resolution 26/9 on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, and believes that such an instrument would be timely. He urges the open-ended intergovernmental working group established pursuant to the resolution to fully consider the heightened risk posed by business activities to environmental human rights defenders in negotiations.

21. The Special Rapporteur appreciates the rights-based approach of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), which requires States parties not only to guarantee those rights, but to ensure that persons exercising them are not penalized, persecuted or harassed in any way.[8] He encourages more States to accede to the Convention, thus putting in place the dual protections for the environment and human rights.

22. The Special Rapporteur notes with satisfaction the ongoing negotiations in Latin America and the Caribbean on the application of principle 10 of the Rio Declaration on Environment and Development,[9] and urges the parties to expedite the conclusion of the agreement in the light of the urgency of the situation, described in the following section. He urges the Economic Commission for Africa (ECA) and the

[8] See www.unece.org/env/pp/contentofaarhus.html.

[9] See http://negociacionp10.cepal.org/3/en.

Economic and Social Commission for Asia and the Pacific (ESCAP) to develop similar legally binding instruments on access to information, public participation and justice in environmental matters, including measures to protect environmental human rights defenders. Such multilateral instruments would be an effective tool to achieve sustainable development goals and respond to many challenges facing our planet, from climate change, biodiversity loss and environmental pollution to poverty eradication. They would also ensure that both States and corporations are held accountable for any violations against environmental human rights defenders and establish effective safeguards to ensure that community interests are fully considered in environmental decisions.

23. The international community and institutions must also act to end threats, intimidation and violence, used to curtail the interaction between environmental human rights defenders and the international and regional human rights mechanisms. The Human Rights Council, in its resolutions 22/6 and 24/24, reaffirmed the right of everyone to unhindered access to and communication with international bodies. The Guidelines against Intimidation or Reprisals (the "San José Guidelines") (HRI/MC/2015/6) endorsed by the chairs of the United Nations human rights treaty bodies aim to enhance the protection provided by treaty bodies to those who face reprisals for engaging with the international human rights regime. The Special Rapporteur encourages other relevant international and regional organizations to follow suit and put in place policies and measures to prevent and address reprisals against environmental human rights defenders.

III. Hostile environment

24. As the global demand for natural resources grows, the environment is becoming a new frontline for human rights and our common future. In many countries around the world, activists and communities are raising their voices to prevent harming our environment and promote alternatives to the planet's devastation through a more sustainable development. They seek a meaningful and urgent societal dialogue and a world where people can live in prosperity and dignity, and where nature is protected.

25. To many, they are heroes defending our planet and our rights. They are not only environmentalists or land activists, but also human rights defenders. However, they are demonized by their opponents as "anti-development" or "unpatriotic". This despite the striving by those defenders for a more sustainable, prosperous and equitable future, an objective shared by the international community as expressed by the adoption of the 2030 Agenda.

26. Despite their human rights work, environmental human rights defenders increasingly face violence and violations of their rights on a daily basis. They are often treated as enemies of the State and, all too often, are targeted for assassination.[16] The scale of killings indicates a truly global crisis.

27. Despite the complexity of quantifying the whole situation, there have been rapid strides in exposing the true picture of attacks against environmental human rights defenders. One revealing report documented the unprecedented 185 killings

[16] See www.theguardian.com/global-development/2016/jun/05/world-environment-day-protecting-activists-human-rights-issue.

of environmental human rights defenders across 16 countries in 2015.[11] The 59 per cent increase from 2014 meant that more than three defenders were murdered, on average, every week in the course of 2015. The sectors of mining and extractive industries (42 killings), agribusiness (20), hydroelectric dams and water rights (15) and logging (15) were major drivers of the murders. According to another report, the largest single group, constituting 45 per cent of the documented 156 defenders killed in 25 countries in 2015, were related to the defence of environmental, land and indigenous peoples' rights.[12]

28. Both reports, collaborated by numerous others,[13] indicate that the large majority of assassinations occurred in the countries of the global South, especially in Latin America and Asia. This is not to deny serious allegations of abuses of environmental human rights defenders in the global North countries, including harassment and strategic lawsuits against public participation that occur with State complicity, or at least disregard.[14] Killings of environmental human rights defenders amounted to 67 per cent of all reported murders of defenders in Asia and 41 per cent of those reported in Central and South America.[15] In 2014, three quarters of the 116 cases of killings of environmental human rights defenders in 17 countries — on average more than two victims per week — took place in Central and South America, with South-East Asia the second most-affected region.[16] The spike in killings was related to large-scale hydropower projects, where dams were built in countries with weak legal regimes, repressive Governments and rampant corruption, and on lands belonging to indigenous and ethnic minority peoples.[17]

29. The Special Rapporteur shares civil society observations that other common characteristics of the killings include the overall impunity with which the perpetrators of these crimes can act and the woefully lacking or ineffective protection measures available for environmental human rights defenders at risk. In almost every affected Latin American country, government and corporate actors are involved in the murders of environmental human rights defenders.[18]

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[11] Global Witness, *On Dangerous Ground*.

[12] Front Line Defenders, *Annual Report 2016: Stop the Killing of Human Rights Defenders* (2016), p. 7. Available from www.frontlinedefenders.org/en/resource-publication/2016-annual-report.

[13] See, e.g., Observatory for the Protection of Human Rights Defenders, *Criminalización de Defensores de Derechos Humanos en el Contexto de Proyectos Industriales: Un Fenómeno Regional en América Latina* (2016), available from www.fidh.org/IMG/pdf/criminalisationobsangocto2015bassdef.pdf, and *Annual Report 2014: "We are not afraid!"*, available from https://wearenotafraid.org/en/; and Friends of the Earth International, *We Defend the Environment, We Defend Human Rights* (2014), available from www.foei.org/wp-content/uploads/2014/06/We-defend-the-environment-we-defend-human-rights.pdf.

[14] Article 19, *A Dangerous Shade of Green: Threats to Environmental Human Rights Defenders and Journalists in Europe* (2014), available from www.article19.org/resources.php/resource/37608/en/a-dangerous-shade-of-green:-threats-to-environmental-human-rights-defenders-and-journalists-in-europe.

[15] Front Line Defenders, *Annual Report 2016*, p. 7.

[16] Global Witness, *How Many More?* (2015), available from www.globalwitness.org/documents/17882/how_many_more_pages.pdf.

[17] Submission by International Rivers, June 2016.

[18] Article 19, *A Deadly Shade of Green: Threats to Environmental Human Rights Defenders in Latin America* (2016), available from www.article19.org/data/files/Deadly_shade_of_green_A5_72pp_report_hires_PAGES_PDF.pdf.

30. The assassination of environmental human rights defenders is only part of the overall violence they face. The submissions received by the Special Rapporteur show that environmental human rights defenders confront numerous threats and violations, including violent attacks and threats to their families, enforced disappearances, illegal surveillance, travel bans, blackmail, sexual harassment, judicial harassment and use of force to dispel peaceful protests. Such violations are committed by State and non-State actors, and take place in the context of the overall stigmatization, demonization and delegitimization of environmental human rights defenders. In some countries, violations are intertwined with the overall climate of criminalization of their work, especially in the context of large-scale development projects (see A/68/262).

31. Reports also indicate that most individuals and groups facing threats are those who oppose land grabbing, extractive industries, the industrial timber trade and large-scale development projects.[19] Indigenous communities and ethnic and racial minorities are particularly vulnerable (see A/HRC/24/41 and A/71/291).[20] They are the most affected because the resources exploited are usually located in their lands; they lack legal protection while exerting strong and vocal opposition; many indigenous communities do not hold formal title over the land they inhabit; and their access to justice is limited.

32. Communications sent by the Special Rapporteur reflect the grim picture of the situation of environmental human rights defenders. In the period from December 2006 to July 2016, the mandate sent 2,730 communications on human rights defenders, 243 of which (9 per cent) concerned environmental defenders. There has been a slight increase in the number of cases involving environmental human rights defenders, from a total of 106 (7 per cent) out of 1,498 communications in the first five-year period (December 2006-May 2011) to 137 communications (11 per cent) in the second period (June 2011-July 2016).

33. During the latter period, the Special Rapporteur sent communications concerning 433 individual environmental human rights defenders whose rights had been violated by the State (security forces, police and local authorities) and by non-State actors (transnational companies, paramilitary groups, organized crime, private security firms and the media).

34. Latin American and Asia have been the most hostile regions for environmental human rights defenders. In the last five years, of the 137 communications, 48 per cent concerned the Americas, the most dangerous area. Those promoting rights in relation to the extractive and mining industries, palm oil cultivation and deforestation proved to be most at risk (27 communications). The largest number of communications concerned Honduras (11), Mexico (10), Brazil (9) and Peru (8). In the vast majority of the fatal cases, the victims had previously reported threats and intimidation, but they received no adequate protection despite a prominent decision

[19] See also Global Witness, *Deadly Environment* (2014), available from www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/; and Mining Watch Canada, *In the National Interest? Criminalization of Land and Environment Defenders in the Americas* (2015), available from http://miningwatch.ca/publications/2015/9/21/national-interest-criminalization-land-and-environment-defenders-americas.

[20] See also the civil society organizations joint report to the Inter-American Commission on Human Rights, available at www.ishr.ch/sites/default/files/article/files/reportcoalitionbusinesslandishr.pdf.

by the Inter-American Court of Human Rights[21] affirming the State duty to respect, protect and fulfil the rights of defenders, as well as to conduct serious and effective investigations of any violations against them, thus preventing impunity.

35. Asia is the second most-dangerous region and has seen an increase in the number of communications, from 25 communications (24 per cent) during the first period to 50 (36 per cent) in the second. The Philippines and India received the largest number of communications on environmental human rights defenders, 9 and 8 respectively.

36. According to civil society reports, corroborated by the communications sent by the Special Rapporteur in the last two years, the most dangerous countries for environmental human rights defenders were Brazil, Cambodia, Colombia, Guatemala, Honduras, India, Mexico, Peru, the Philippines and Thailand. There are indications that some African countries are facing similar challenges, even if they were not documented and publicized sufficiently.

37. On the basis of the communications sent in the last five years, one can observe a clear link between violations committed against environmental human rights defenders and the area of their activities. The extractive industry was the sector with the most violations (54 communications), while 37 communications referred to land rights, such as territorial disputes and the right to ancestral lands; 27 communications referred to construction projects such as hydroelectric dams, oil and gas pipelines and aqueducts. Other areas in which environmental human rights defenders faced threats included development policy, fisheries, forced evictions, nuclear power and environmental pollution.

38. With regard to the types of violations, communications indicate that environmental human rights defenders faced a high risk of threat to their physical integrity (more than 151 killings were documented during the same period), while a further 57 individuals and 5 communities were physically attacked. They have also been intimidated (54 individuals, 17 organizations and 1 community) and harassed (more than 31 individuals, 8 families, 5 communities and 3 groups). More than 91 environmental human rights defenders have been imprisoned and arbitrarily detained, while more than 82 have been arrested for their rights work.

39. The increased scale of acts of reprisal against environmental human rights defenders protesting against environmental harms caused by projects funded by international financial institutions is disquieting. The submissions received revealed large gaps between professed commitments to participation and accountability and the situation on the ground, pointing to an overwhelming failure by those institutions to assess risks and respond to reprisals effectively. One report documented case studies in Cambodia, Ethiopia, India, Uganda and Uzbekistan of reprisals taking a variety of forms.[22] The critics of projects funded by the World Bank Group were reportedly the target of threats, intimidation tactics and baseless criminal charges. Some women faced sexual harassment or gender-based threats, attacks, or insults when they spoke out. Security forces responded violently to peaceful protests, physically assaulting community members and arbitrarily

[21] *Kawas-Fernández v. Honduras*, judgment of 3 April 2009.

[22] Human Rights Watch, *At Your Own Risk: Reprisals against Critics of World Bank Group Projects*, available from www.hrw.org/report/2015/06/22/your-own-risk/reprisals-against-critics-world-bank-group-projects.

arresting them. In other cases, critics or their family members were threatened with the loss of their jobs or livelihoods. In many countries, such reprisals often occurred within a broader effort to demonize critics as unpatriotic or "anti-development".

40. It is evident that the situation of environmental human rights defenders is alarming. The scope and intensity of violence against them demand immediate action. The Special Rapporteur therefore calls on the international community, regional communities, States, international financial institutions, business enterprises and other actors to urgently and publicly adopt a zero-tolerance approach to the killing of and violent acts against environmental human rights defenders, and immediately launch policies and mechanisms to empower and protect them. He notes that the threats and risks facing environmental human rights defenders could be effectively prevented only if the causes and contexts underlying the hostile environment where they operate are fully understood and addressed.

IV. Root causes underlying violations

A. Exclusion and power imbalance

41. One of the systemic causes of conflicts around environmental rights is the imbalance of power between States, companies and environmental human rights defenders. The increasing conflicts over the environment stem from resource exploitation that fails to address legitimate concerns and demands of local communities. Those communities are extremely vulnerable to exploitation and abuse because they are already marginalized and excluded from decision-making. Power inequality permeates all decision-making processes, from the upstream phases such as the determination of the advisability of a project to the design of the project, and onward to its implementation. In many cases, power inequality is aimed at shrinking space for civic participation in order to muzzle opposition to development projects. It also relates to a poor understanding of communities' specificities and their exclusion. The affected rights holders often live in rural, isolated areas, with little access to government services and the judiciary.

42. Many of these communities, particularly indigenous ones, hold the right to free, prior and informed consent, and all of them have the right to participate fully in consultations around proposed projects that may affect their lands and livelihoods. Despite their recognition in various international, regional and domestic laws, those rights are often not meaningfully implemented, or are simply ignored by companies, with the complicity of Governments. Some Governments strategically choose to deny the rights to peoples that have not been "officially" identified as indigenous. The consultation processes also regularly fail to address power inequalities within communities, leaving isolated such groups as women or ethnic groups owing to one-size-fits-all approaches.

43. Moreover, in many cases, not only do State authorities and companies fail to consult with and obtain the consent of the affected communities, but they also stigmatize dissent and retaliate against critics, instilling mistrust and engendering more conflict in the mid- to long term. The Special Rapporteur heard testimonies that highlight the lack of support by corporations and State authorities for community-based environmental impact assessments and consultations, which could de-escalate potential conflicts.

44. Preventive approaches, including ensuring the meaningful participation of environmental human rights defenders in the decision-making at all stages, are crucial to overcoming these challenges. Laws, contracts and human rights impact assessments by States and corporations should be developed with the active participation of defenders and communities. They should also contain provisions and procedures on the procedural rights of these communities and defenders. Such provisions should be included in national action plans on business and human rights, environmental impact assessments and decision-making on business concessions and land tenure.

45. The range of actors that stand to gain from hindering their work exacerbates the risks facing environmental human rights defenders. The human rights obligations of business actors have not been articulated as clearly as those of States, and the weak regime concerning the duty of companies to respect the rights of defenders is one factor underlying their vulnerability. Reports have shown that businesses have been involved in human rights abuses that range from restricting the legitimate activities of defenders to curtailing the exercise of their rights, to attacks carried out by private security firms on behalf of companies. National action plans, when established, often fail to advise how States should sanction corporations involved in such abuses. Some corporations have developed social responsibility strategies or mechanisms, which either lack teeth to prevent violations or have been used as publicity tools to whitewash the company's public image.

46. A number of United Nations experts, civil society organizations and business representatives have repeatedly made the ethical and business case for ensuring that human rights defenders are protected and consulted.[23] Business must respect the rights of defenders to express dissent and oppose their activities. This responsibility extends to ensuring that their subsidiaries — as well as private security firms and contractors acting on their behalf — refrain from harming defenders and restricting their rights, are not involved in threats or attacks, and consult to identify, mitigate and remedy the adverse human rights impact of business operations. States should communicate clearly the human rights obligations of business enterprises, incentivize them to uphold those responsibilities as a matter of good business practice and sanction those companies associated with threats to defenders both at home and abroad.

B. Commodification and financialization of the environment

47. The intensified competition for natural resources in recent decades has led to multiple social and environmental conflicts all over the world. The recent crisis has exposed the vulnerability of the countries of the global South, which have prioritized resource-based development models to raise their national income. Much of the demand for the resources in those countries comes from countries in the global North. In a globalized world, the quest for economic growth has resulted in a neo-colonial environment that exacerbates conflicts between communities and business actors. What underlie these conflicts are profoundly different approaches to development.

[23] See, e.g., http://us1.campaign-archive2.com/?u=97549cf8cb507607389fe76eb&id=6c8b3ea389&e=b9e5fa41cf.

48. Recent reports have pointed to a growing opposition between what could be considered a commodity-based approach, prioritizing economic growth and midterm profits, and rights-based approaches, favouring populations' interests and sustainability.[24] Communities protesting against projects that threaten their very livelihood and existence have often faced stigmatization and attacks from States and corporations, which label them "anti-development". Yet, these defenders often seek to preserve natural resources and to ensure a holistic and long-term approach to development where land, water, air and forests are not reduced to mere marketable goods. The commodification and financialization of nature often lead to simplifying the real "value" of the environment, ignoring the social or cultural dimensions and the complex interactions of elements within and between ecosystems.

C. Corruption and impunity

49. Corruption and impunity also underlie the growing number of conflicts around natural exploitation and large-scale development projects, owing partly to the fact that the majority of such projects require vast financial investments, which can fall prey to corruption. This situation is particularly patent in States with poor and non-transparent governance processes, which lead to collusion at the expense of the public good. In many land-grabbing situations, businesses, authorities, local suppliers and sometimes organized crime benefit from loopholes in the laws regulating these practices.[25]

50. Corruption is often a consequence of the lack of transparency in such projects. This is exemplified by environmental impact assessments that were not performed with the participation of the affected communities, were unavailable to them or were inaccessible owing to the complexity of the documentation or its language. Yet, Governments use transparency as a pretext to harass organizations opposing large-scale projects. Moreover, the complexity of the structures and processes of many large-scale development projects also makes it difficult to clearly identify the multiplicity of stakeholders (banks, anonymous companies, international investors, local suppliers, funding institutions, etc.) and the chain of responsibility for ensuring accountability for certain violations.

51. The Special Rapporteur is extremely concerned about the lack of independent and prompt investigations into attacks perpetrated against environmental human rights defenders, which is often linked to a lack of resources, corruption and collusion between perpetrators. States have nearly always failed to ensure that perpetrators are brought to justice and sanctioned. This has been the case in countries such as Brazil, Guatemala, Honduras and the Philippines, and this situation can perpetuate the climate of impunity, sending the message that environmental human rights defenders cannot trust the justice system to seek remedy for violations.[26]

52. As a result, these root causes have long-term effects, contributing to the establishment of a two-tier system in which the law is more assiduously applied to

[24] Friends of the Earth International, "*We Defend the Environment*"; Global Witness, *On Dangerous Ground*.

[25] See www.u4.no/publications/environmental-crime-and-corruption; and www.globalwitness.org/fr/campaigns/environmental-activists/death-comrade/.

[26] See Observatory for the Protection of Human Rights Defenders, *Annual Report 2014*.

small-scale farmers, ethnic minorities or indigenous peoples who are not able to provide property deeds while human rights violations committed by business interests and their allies continue with impunity.

D. Groups of environmental human rights defenders at higher risk

53. Environmental human rights defenders are one of the most heterogeneous groups of defenders. The category includes a diverse range of people, profiles and trajectories, from small-scale farmers with no land deeds to environmental lawyers and journalists, from well-organized non-governmental organizations to isolated indigenous communities. In many cases, some of these groups already experience marginalization. In many situations, they do not always have the capacity to challenge decisions in courts or they do not have access to mass media. Their marginalization is also due to the nature of their struggles as human rights defenders. Many become environmental human rights defenders by "accident" or "necessity", taking a stand against injustice or harm to their environment. This may amplify their vulnerabilities, as they may not self-identify as environmental human rights defenders and therefore they may be unaware of their rights or existing protection measures, mechanisms or organizations that could support them. The very specific nature of rural communities can also aggravate their vulnerability, as these communities can be located in isolated areas without access to communication and support networks.

54. Many violations against environmental human rights defenders can be directly linked to patriarchy, sexism, racism, xenophobia and chauvinism. This is important in the case of women defenders, who may oppose large-scale development projects but also challenge the systemic power inequality and discrimination deeply rooted in societies. They usually question patriarchy or misogyny, sometimes within their own communities. As activists, they face the same threats as other defenders but they are more likely to face gender-specific violence. Reports have shown that sexual violence is used to silence women human rights defenders in particular.[27] In Latin America, for example, women defenders are among the most threatened environmental human rights defenders owing to the nature of their human rights work and to their gender.[28]

55. Furthermore, women environmental human rights defenders face a number of challenges, including those related to exclusion from participation in the negotiation and decision-making processes; criminalization used as a political strategy to deter resistance and delegitimize their work; smear campaigns against them in the media; and discrimination and violence against them in their families, communities and human rights movements.[29] Women rights defenders from indigenous communities, with ethnic or racial minority origins or with disabilities can also suffer multiple

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[27] See http://defendingwomen-defendingrights.org/wp-content/uploads/2014/03/Our-Right-To-Safety_FINAL.pdf; https://urgentactionfund.org/in-our-bones/.

[28] Urgent Action Fund of Latin America and the Caribbean and others, *Patterns of Criminalization and Limitations on the Effective Participation of Women Who Defend Environmental Rights, Territory, and Nature in the Americas* (2015), available from http://media.wix.com/ugd/b81245_33bf16237e2847e2bb300f664356d424.pdf, and *Women Defending the Territory*, available from http://media.wix.com/ugd/b81245_72106e74f799442f8cca5e1c685700a6.pdf.

[29] Submission from Association for Women's Rights in Development.

discrimination.[30] Gender, indigenous status, rural location and other factors can intersect to isolate individuals, groups and communities.

56. Indigenous communities also face multiple forms of aggression and violence. In specific situations, oppression against them is encouraged by institutionalized racism and stigmatization that deny the rights of these communities. Private actors such as agribusinesses and extractive industries as well as law enforcement agencies have been regularly observed to commit violations against environmental human rights defenders from indigenous communities. National development strategies often fail to include specific approaches and processes for indigenous communities that would ensure the conservation of their ancestral lands and recognize their rights to their livelihoods and environment. Linguistic barriers, countless obstacles to accessing basic social services and the imposition of unfavourable models of consultation aggravate the vulnerability of indigenous environmental human rights defenders.

57. In this context, the Special Rapporteur advocates an intersectional approach, embracing the heterogeneity and diversity of environmental human rights defenders and understanding the various root causes and situations exposing them to risks and threats.

V. Empowering environmental human rights defenders

58. The fulfilment of the international community's commitment to the protection of the environment is premised on the empowerment of environmental human rights defenders. Existing processes of good governance are similarly premised on the existence of a safe and enabling environment for those defenders.

59. Protection practices should contribute to the full respect of the rights of environmental human rights defenders and strengthen their security. The Special Rapporteur outlined seven principles that undergird effective protection practices for human rights defenders: they should be rights-based, inclusive, gender-sensitive, focused on "holistic security", oriented to individuals and collectives, participatory and flexible (A/HRC/31/55).

A. Strengthening resources and capacities

60. The effective protection of defenders starts with the recognition that everyone has the right to defend human rights. This is particularly important in the case of environmental human rights defenders, who may not self-identify as human rights defenders or whose identity may be more clearly tied to their community or to the environmental causes they pursue. The Special Rapporteur recognizes the importance of these other identities and advocates for a non-exclusive approach to the identification of environmental human rights defenders. Indeed, defenders can and should draw strength from their multiple, overlapping identities. It is also important to recognize that because such identities might create risks for particular environmental human rights defenders, the resources and capacities of the defenders must recognize and seek to address the differences between and among them.

[30] See www.ishr.ch/sites/default/files/article/files/reportcoalitionbusinesslandishr.pdf.

61. Human rights capacity-building for environmental human rights defenders and others outside the mainstream of the defender community is crucial to their protection and rights. Their meaningful participation in decision-making must be premised upon a full understanding of their rights. Defenders have also expressed appreciation for technical support that helps them to map threats and vulnerabilities more effectively and develop workable security plans to address the risks.

62. Litigation against perpetrators is an important way of ensuring accountability and obtaining redress. Coordinated transnational litigation against perpetrators of violence against environmental human rights defenders has helped reveal the complicity of various international businesses and decreased impunity. However, the use of legal processes often requires technical expertise and familiarity with judicial systems that are foreign to defenders' communities, especially when the legal action in question takes place far away from their place of residence, for example, in the home State of a transnational corporation. In such cases, defenders require legal advice, as well as sustained material and psychological support, to pursue claims. The Special Rapporteur welcomes initiatives that support environmental human rights defenders by connecting local communities with international law firms and overseas lawyers,[31] and he intends to actively support legal action initiatives in this area.

63. Networks — local, regional and international — can effectively support individual environmental human rights defenders and communities at risk. They allow good practices to be shared, demonstrate solidarity and muster resources, and facilitate access to safe havens for defenders under threat. Networks can take a variety of forms, ranging from informal ad hoc associations to international confederations of organizations, to global networks of defenders working on similar issues. Given the nature of the work of environmental human rights defenders, there is a pressing need to develop networks that bring together the overlapping constituencies involved in environmental justice, including environmentalists, conservationists, indigenous communities and the human rights movement.

64. Environmental human rights defenders often face situations of acute risk, when they are threatened with severe harm or their very lives are put in danger. For interventions in these situations to be effective, they need to be timely, accessible and appropriately tailored to the circumstances of defenders (A/HRC/31/55). Legal advice, legal representation, the provision of bail and trial monitoring have been particularly important for defenders who have been criminalized for their activities. Legal forums are increasingly being used to silence defenders, particularly those who oppose large-scale development projects and the actions of companies. The use of strategic litigation against public participation lawsuits silences defenders, effectively denying them their rights to freedom of expression and participation in public affairs. Defenders require support in their defence against such lawsuits, the financial and psychological burdens of which are often so great that they distract and demobilize defenders.

65. In emergencies, some environmental human rights defenders can benefit from ad hoc and structured relocation initiatives. A number of actors provide emergency grants to defenders in immediate danger. Emergency grants that have easy and fast application processes and quick response times and that allow defenders discretion

[31] See www.edlc.org/our-work/providing-resources/resource-directory/.

in using funds in a manner appropriate to their personal situation have helped many defenders cope with threats and attacks. With respect to both relocation and emergency grants, however, the particular characteristics of environmental human rights defenders may make the traditional delivery of such support inappropriate: the community-based nature of environmental and land activism may make relocation a less-desirable option and traditional ideas about who should apply for emergency grants may make this option unsuitable. It is vital to consult the defenders themselves on the suitability of interventions in their personal circumstances lest they inadvertently increase the risks that defenders face. Further work should be done by all actors to ensure that defenders are aware of the support that is available to them in emergency situations.

B. Fostering a safe and enabling environment

Meaningful participation, transparency, and accountability

66. Individuals and communities should have the right to decide on their own priorities for development and to exercise control over their own economic, social and cultural development. In particular, they should be involved in the design, implementation and evaluation of plans and programmes for development that may have a direct effect on them. Meaningful and early participation is not simply a right but also a key element in a strategy to prevent tensions between different actors and violence against environmental human rights defenders, through recognition of their legitimate role in decision-making.

67. Participation should begin with the involvement of local communities in long-term planning. National action plans on business and human rights, environmental impact assessments and other formal processes should be developed through consultative processes involving broad participation.

68. State and non-State actors should obtain the free, prior and informed consent of indigenous communities affected by activities on lands that they own, occupy or use (ibid.). The Special Rapporteur recognizes that there is an ongoing debate about what constitutes such consent and whether it has been fulfilled in particular cases. The United Nations Declaration on the Rights of Indigenous Peoples provides guidance on the application of this principle to indigenous peoples. However, further discussion and the setting of international standards on the nature and application of this principle to indigenous peoples and other communities is necessary, coupled with a renewed emphasis on its implementation through monitoring and support to environmental human rights defenders.

69. States should address a key challenge that environmental human rights defenders face in exercising their right to participation: the lack of transparency and accountability by State and non-State actors in decision-making. The right of participation requires access to information and defenders often struggle to obtain information about negotiations and agreements between State authorities and companies that affect their land, livelihoods and local environment. Confidentiality clauses in agreements between corporations and State actors can also hinder access to information and should therefore be reviewed.

Impunity and access to justice

70. The Special Rapporteur is seriously concerned about impunity for attacks against environmental human rights defenders, an issue he raised in his first report in June 2014 (A/HRC/28/63). He is acutely aware that little or no action is usually taken even when environmental human rights defenders lodge formal complaints about violations they have faced. It is vital for State authorities to investigate such incidents promptly and to bring perpetrators to justice. When these incidents relate to the activities of companies, it is crucial for the authorities to consider them carefully and to conduct their own investigations to determine to the culpability of their employees, contractors and business partners.

Legal frameworks

71. In order to build an environment conducive to the defence of rights, States need to review regularly the adequacy of laws, policies, regulations and enforcement measures to ensure that businesses respect human rights and that environmental human rights defenders are protected. In relation to the latter, civil society has developed a model law for the protection of defenders[32] which provides useful guidance on the features of a comprehensive national protection regime.

72. As mentioned above, one of the root causes of abuses suffered by environmental human rights defenders is the lack of legal recognition of land rights, in particular for indigenous communities and those affected by post-colonialism, conflict and other causes of forced displacement. States should enact laws that recognize the rights of such individuals and communities. Conversely, States need to review and repeal laws that facilitate the exploitation of natural resources, thereby threatening the rights of those affected.

Businesses and human rights due diligence

73. The Special Rapporteur welcomes commitments by business enterprises to respect human rights and protect the environment, often expressed in public statements and policies, as well as through the adoption of voluntary guidelines and codes of conduct. The Equator Principles, for example, set out a framework which financial institutions can use to assess and manage the social and environmental risks and impacts of projects, as well as to meet minimum standards for due diligence.[33]

74. Such commitments, while significant, are insufficient in themselves. The Special Rapporteur echoes the observations of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the importance of measuring the efforts of State and non-State actors to protect rights and remedy abuses so that gaps in performance and accountability can be tracked, reported and assessed (A/70/216).

75. Human rights impact assessments can be useful tools for human rights due diligence, if structured and implemented appropriately. Such assessments should estimate possible future and actual human rights impacts; involve the participation

[32] Model Law for the Recognition and Protection of Human Rights Defenders (June 2016), available from www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf.

[33] See www.equator-principles.com/resources/equator_principles_III.pdf.

of affected individuals and communities; and assess risks to rights holders as well as the capacity of duty bearers to respect, protect and fulfil these rights.[34]

76. Businesses should provide clear guidance to employees, contractors and partners on the rights of environmental human rights defenders and communities to express their views, conduct peaceful protest and criticize practices without intimidation or retaliation. They should have clear procedures for receiving complaints of misconduct and to respond to them in a timely manner. Human rights due diligence should involve tracking responses and explaining how the impacts are addressed. Businesses need to set up transparent processes that provide remedies for negative human rights impacts.

77. In some cases, banks and financial institutions have provided funds, services and technical support for companies to rectify and prevent human rights violations, such as the improper acquisition of land. The Special Rapporteur welcomes the growing commitment of financial institutions to principles such as responsible financing, lending and investment. The use of environmental, social and governance criteria for risk assessment and the evaluation of the performance of investments can strengthen the accountability of corporations.

Human rights education

78. Environmental education is, laudably, becoming widespread, as expressed both in formal curricula in educational institutions and in public education campaigns. Such education initiatives should recognize the crucial role played by environmental human rights defenders in environmental protection. Building public support for defenders through education serves important preventive and protective functions. Human rights education must also be available for government officials, journalists and others working on environmental and development issues. The Special Rapporteur encourages initiatives such as the Global Action Programme on Education for Sustainable Development of the United Nations Educational, Scientific and Cultural Organization and supports the call by UNESCO for inclusive, empowering education about the environment, engaging civil society and local communities as active participants.

79. Similarly, it is important for different branches of Government beyond traditional units responsible for law enforcement to recognize the role of environmental human rights defenders in environmental protection. State entities responsible for other activities, including for the environment, resource development and indigenous peoples, must also be involved in the protection of the environment and environmental human rights defenders. States are encouraged to integrate a human rights-based approach into the work of environmental protection agencies and other relevant institutions. It is important that such institutions be given the resources and support required for effective environmental governance.

[34] Toolkits and guides on human rights assessment impacts are available from https://hrca2.humanrightsbusiness.org/; www.unglobalcompact.org/docs/issues_doc/human_rights/GuidetoHRIAM.pdf; and www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf.

Human rights awards

80. Awards and prizes for environmental human rights defenders are an important means of drawing attention to their work and the risks they face. Awards are based on their environmental achievements generally or on specific risks. An example of the latter is the Goldman Environmental Prize, awarded annually to environmental human rights defenders from around the world.[35] Awards also help build the profile and legitimacy of defenders, give voice to their security concerns and celebrate their successes. However, awards are not a panacea, and should be supported by robust protection measures for defenders at risk. Wherever advisable, they should recognize groups of defenders and communities rather than singling out individuals.

C. Boosting regional and international support

Role of individual States

81. Bilateral cooperation between States can build the capacity of institutions engaged in protecting the environment and environmental human rights defenders. For example, the Swedish Environmental Protection Agency, in collaboration with the United Nations Development Programme, is working with similar agencies in Kenya, Colombia, Mongolia and Mozambique to integrate a human rights-based approach into environmental institutions and processes.

82. However, bilateral and multilateral agreements between States can also inadvertently increase the risks faced by environmental human rights defenders. Clauses such as those on investor-State dispute settlements may hinder State efforts to consult with defenders. Similarly, restrictive clauses in contracts may limit the information available to defenders and infringe upon their right to participation.

83. States play a prominent role in monitoring and protecting environmental human rights defenders through their diplomatic missions abroad and human rights focal points trained to respond to the situation of defenders at risk. States should keep the situation of environmental human rights defenders on the agenda of bilateral and international discussions, including by raising specific cases of defenders at risk through high-level visits, political dialogue, démarches and "quiet diplomacy", using the universal periodic review process to make recommendations to States on the protection of defenders, supporting strong Human Rights Council resolutions on the protection of defenders and developing and implementing guidelines for the protection of defenders.

Regional and international forums

84. Regional and international forums provide important mechanisms for monitoring and responding to the situation of environmental human rights defenders. The Inter-American Commission on Human Rights established the Office of the Rapporteur on the Situation of Human Rights Defenders, which monitors the situation of defenders, including environmental human rights defenders. The Commission and the Inter-American Court of Human Rights have provided important relief to environmental human rights defenders through court decisions and "precautionary measures", requesting States to take action where defenders are

[35] See www.goldmanprize.org/.

at acute risk. The Special Rapporteur is concerned about the budgetary reduction facing the Commission and its impact on the continuing ability of the Commission to monitor, support and protect defenders in the region.

85. The African Commission on Human and Peoples' Rights has also provided guidance for States in the region, particularly with respect to the risks faced by environmental human rights defenders who oppose business and development interests. The Commission's Special Rapporteur on Human Rights Defenders has also provided assistance to defenders at risk and supported the development of regional guidelines on the rights of human rights defenders, including environmental human rights defenders.

86. Interregional dialogues between regional institutions are an important conduit for raising awareness of the situation of environmental human rights defenders. The Special Rapporteur encourages the expansion of the dialogues, including the new regional regime emerging in the Association of Southeast Asian Nations (ASEAN) region in the light of the many risks faced by environmental human rights defenders in Asia.

International cooperation in bringing perpetrators to justice

87. It is not only environmental harm that has a transboundary dimension. Some of the perpetrators of abuses against environmental human rights defenders are similarly international in nature. For example, transnational companies in one State may direct and control the harm that is inflicted upon defenders in another State. While national mechanisms must be strengthened to ensure an end to impunity domestically, the international community must also address the transboundary dimension of such violations by setting standards and increasing coordination and mutual legal assistance. It should consider the application of existing international criminal law frameworks, including those related to transnational criminal activity, to the perpetrators of violations committed against environmental human rights defenders and affected communities.

88. The Special Rapporteur welcomes initiatives by States to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. These include obligations on companies to report on their operations globally and legal regimes allowing for the prosecution of nationals wherever their offences were committed.

International financial institutions

89. International financial institutions play a significant role in providing financial and technical support to State and non-State actors for economic and social development around the world. They are important actors in ensuring that environmental human rights defenders can voice concerns without fear of reprisals. At a minimum, international financial institutions have a duty to ensure that their activities do not contribute to, or exacerbate, human rights violations, including those committed by borrowers. In this regard, the Special Rapporteur joins the call made in March 2016 by over 150 civil society organizations for international financial institutions to ensure meaningful and effective participation and

accountability within their investments and guarantee a systematic analysis of the enabling environment for fundamental freedoms at the country and project levels.[36]

90. International financial institutions such as the World Bank Group can play an active role in influencing actors in the public and private sectors to respect the rights of environmental human rights defenders, to act with transparency and accountability for their actions and to seek the meaningful participation and consultation of affected communities in their activities. The Special Rapporteur welcomes the reflection on the practice of the World Bank by its Inspection Panel and looks forward to upcoming publications on the lessons emerging in a number of domains of the Bank's activities, including environmental assessment and indigenous peoples and the requirements for consultation, participation and disclosure of information. He advocates the adoption of concrete policies and measures to prevent and address acts of reprisals against environmental human rights defenders for their cooperation with international financial institutions.

91. Good practices among international financial institutions include requiring borrowers to communicate to those affected by projects how their feedback in the design and execution of projects has been followed up; denouncing reprisals against defenders and using their influence to protect environmental human rights defenders at risk; and creating independent oversight mechanisms for activities and situations where there is a high risk of human rights violations.

VI. Conclusions and recommendations

A. Conclusions

92. Environmental human rights defenders are at the heart of our future and the future of our planet. They play a critical part in ensuring that development is sustainable, inclusive, non-discriminatory and beneficial for all, and does not cause harm to the environment. The Special Rapporteur stresses that empowering and protecting environmental human rights defenders is part and parcel of the overall protection of the environment.

93. Upholding human rights for environmental human rights defenders is essential to the protection of the environment and environmental rights, and is grounded in international human rights standards. Environmental human rights defenders cannot properly defend environment-related rights without exercising their own rights to access to information, freedom of expression, peaceful assembly and association, guarantees of non-discrimination and participation in decision-making. States have the duty to protect those rights as well as the rights to defend human rights and to life, liberty and security. Despite the clarity of international human rights law in this regard, increased violence, including killing, against environmental human rights defenders around the world points to a situation of global crisis.

94. The international community and States should urgently assume their responsibility to empower and protect environmental human rights defenders. The newly adopted international agreements, such as the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change, have engendered high

[36] See http://rightsindevelopment.org/?news=sign-on-statement-on-ifis-participation-and-human-rights.

expectations among environmental human rights defenders around the world. That vision is doomed to fail if those individuals and groups on the frontline of defending sustainable development are not protected at the national, regional and international levels.

95. The present report, including the recommendations below, is aimed at guiding all relevant actors in their future efforts to implement their commitments. We should remember that empowering environmental human rights defenders is not only crucial to the protection of our environment and the human rights that depend on it, but also a safeguard to ensure that our future development will be less conflict-prone and more inclusive, leaving no one behind.

B. Recommendations

96. **In order to reverse the tide of the worsening situation of environmental human rights defenders, the Special Rapporteur wishes to put forward a set of recommendations to the attention of various stakeholders. He calls on all stakeholders to urgently and publicly adopt a zero-tolerance approach to the killings of and violent acts against environmental human rights defenders, and to immediately launch policies and mechanisms to empower and protect them. He further appeals to all actors to document more systematically information on the situation of environmental human rights defenders at risk, especially in countries of concern, with a view to advocating more actionable and effective measures for their protection.**

97. **The international community should:**

(a) **Ensure that the implementation of the 2030 Agenda for Sustainable Development is guided by a human rights-based approach, guaranteeing meaningful participation of environmental human rights defenders and affected communities, as well as empowering and protecting defenders at the international, regional and national levels;**

(b) **Publicly scrutinize and condemn violations of the rights of environmental human rights defenders and raise the visibility of their legitimate role in defending the land and environmental rights;**

(c) **Ensure that any future bilateral and multilateral trade agreements involving countries where environmental human rights defenders are under threat include measures to prevent and address violations against defenders and mechanisms to investigate and remedy violations;**

(d) **Ensure that all development aid and assistance is guided by human rights and the Declaration on Human Rights Defenders, applying them to programming in all sectors and at all stages;**

(e) **Formulate an international treaty to prevent and address human rights violations by transnational and national business enterprises, also considering the heightened risk posed by business activities to environmental human rights defenders.**

98. **The General Assembly and the Human Rights Council should monitor violations against environmental human rights defenders.**

99. **Regional intergovernmental organizations should:**

(a) **Urge negotiating parties in Latin America and the Caribbean to expedite the conclusion of the negotiations on the application of principle 10 of the Rio Declaration on Environment and Development;**

(b) **Encourage more States to accede to the Aarhus Convention, in the absence of other multilateral and regional agreements at this stage;**

(c) **Provide political and financial support to regional human rights mechanisms with a view to reinforcing the protection of environmental human rights defenders in the regions;**

(d) **Formulate policies and measures to prevent and address reprisals against environmental human rights defenders for cooperating with regional mechanisms.**

100. **ECA and ESCAP should develop similar legally binding instruments on access to information, public participation and justice in environmental matters, including measures to protect environmental human rights defenders.**

101. **The ASEAN Intergovernmental Commission on Human Rights and the African Commission on Human and Peoples' Rights should establish a mechanism to provide emergency protection for defenders.**

102. **States should:**

(a) **Reaffirm and recognize the role of environmental human rights defenders and respect, protect and fulfil their rights;**

(b) **Ratify ILO Convention No. 169 and guarantee the right to consultation and participation of indigenous communities in decisions at every stage of a project's life cycle;**

(c) **Ensure a human rights-based approach to development in all relevant legal and policy regulations, including multilateral and bilateral agreements or contracts, and establish mechanisms for due diligence concerning the protection of environmental human rights defenders and the environment;**

(d) **Ensure a preventive approach to the security of environmental human rights defenders by guaranteeing their meaningful participation in decision-making and by developing laws, policies, contracts and assessments by States and businesses;**

(e) **Formulate national action plans on business and human rights and ensure that they, as well as environmental impact assessments, are developed in full transparency and with meaningful participation prior to the granting of permission or concessions for the implementation of any business or development project;**

(f) **Guarantee the effective implementation of any precautionary or urgent measures granted to environmental human rights defenders by regional human rights mechanisms;**

(g) **Develop protection mechanisms for environmental human rights defenders, taking into account the intersectional dimensions of violations**

against women defenders, indigenous peoples and rural and marginalized communities;

(h) Ensure prompt and impartial investigations into alleged threats and violence against environmental human rights defenders and bring to justice direct perpetrators and those that participated in the commission of crimes;

(i) Engage with investors and business enterprises to uphold their human rights responsibilities and sanction those companies associated with violations against defenders, both at home and abroad.

103. **United Nations organizations and agencies should:**

(a) Address the legal gaps that heighten risks for environmental human rights defenders, including weak environmental standards and laws protecting the rights of indigenous peoples, their land rights and customary title to territories and resources;

(b) Formulate and implement strategies and action plans to strengthen the participation and protection of defenders and to prevent violations against them, including in the framework of the Sustainable Development Goals and the Human Rights Up Front initiative;

(c) Monitor, document and respond to the cases of alleged acts of reprisal against environmental human rights defenders for cooperating with international financial institutions, United Nations agencies and United Nations human rights mechanisms.

104. **International financial institutions should:**

(a) Respect and protect the human rights of defenders and implement their obligations in all activities to ensure an enabling environment for defenders;

(b) Integrate a human rights-based approach in their policies for fund allocation and management; condition their funds on such an approach, in consultation with affected communities and environmental human rights defenders and with their continuing support in the implementation of human rights safeguards.

105. **Business enterprises should:**

(a) Adopt and implement relevant international and regional human rights standards, including the Guiding Principles for Business and Human Rights and the Voluntary Principles on Security and Human Rights;

(b) Fulfil legal and ethical obligations, including rigorous human rights due diligence, and perform human rights impact assessments for every project, ensuring full participation by and consultation with affected communities and environmental human rights defenders;

(c) Refrain from physical, verbal or legal attacks against environmental human rights defenders and meaningfully consult with them in the design, implementation and evaluation of projects, and in due diligence and human rights impact assessment processes;

(d) Disclose information related to planned and ongoing large-scale development projects in a timely and accessible manner to affected communities and environmental human rights defenders;

(e) Establish the grievance mechanisms necessary to avoid, mitigate and remedy any direct and indirect impact of human rights violations;

(f) Ensure that private security companies and other subcontractors respect the rights of environmental human rights defenders and affected communities and establish accountability mechanisms for grievances.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right to food

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to food, Hilal Elver, submitted pursuant to General Assembly resolution 70/154.

* A/71/150.

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Interim report of the Special Rapporteur on the right to food

Summary

The present report, submitted pursuant to General Assembly resolution 70/154, is dedicated to reiterating the importance of a rights-based approach to "adequate food", that is, nutritious food for all. It discusses the underlying factors affecting nutrition, including industrial food systems, unhealthy eating environments and the growing threat of non-communicable diseases, as well as the harmful effects of trade liberalization and unregulated marketing of food products. The Special Rapporteur outlines nutrition governance at the global level and considers its shortcomings, and recommends taking a human rights-based approach to combating malnutrition at both the global and national levels.

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I. Introduction

1. Malnutrition, in all its forms, has become a universal challenge. Today, nearly 800 million people remain chronically undernourished, more than 2 billion suffer from micronutrient deficiencies, and another 600 million are obese. These three forms of malnutrition coexist within most countries, communities and even individuals. Ensuring the right to adequate food extends far beyond merely ensuring the minimum requirements needed for survival and includes access to food that is nutritionally adequate. Increasingly, the right to adequate nutrition is being recognized as an essential element of the right to food and the right to health.

2. The underlying causes of malnutrition are complex and multidimensional, and access to nutritious food is often a key indicator of socioeconomic inequality. Women and children are particularly sensitive to malnutrition, while poverty, gender inequality and lack of access to adequate sanitation, health and education services are aggravating factors. Today's food systems, which are dominated by industrial production and processing, as well as trade liberalization and aggressive marketing strategies, are fostering unhealthy eating habits and creating a dependence on highly processed, nutrient-poor foods. Unequal access to and control over resources, as well as unsustainable production and consumption patterns, which lead to environmental degradation and climate change, also contribute to the malfunctioning of food systems.[1]

3. Recognizing the growing threat of malnutrition in all its forms and its negative impacts on economic development, universal health and efforts to reduce inequality, the international community has taken major initiatives to ensure global policy action. The World Health Organization (WHO) global targets to improve maternal, infant and young child nutrition by 2025, the Global Action Plan for the Prevention and Control of Non-Communicable Diseases 2013-2020 and the political commitments made at the Second International Conference on Nutrition, in 2014, to ensure the right of everyone to safe, sufficient and nutritious food are encouraging responses. It is now also recognized that nutrition plays a crucial role in fulfilling the 2030 Agenda for Sustainable Development.

4. Yet the world is not on track to reach these global targets.[2] It is time to translate commitment into action. The United Nations Decade of Action on Nutrition, proclaimed in April 2016, presents a unique opportunity to ensure a coherent, inclusive and transparent response to malnutrition, embedded within human rights. Applying a human rights-based approach to nutrition policy acknowledges rights holders and the duty of Governments to refrain from actions that negatively affect the right to nutrition and to implement strategies that tackle malnutrition's root causes. Recognizing that private sector involvement in responding to malnutrition cannot be ignored, it is necessary to establish suitable safeguards to prevent negative corporate influences on nutrition governance. States should be supported in their efforts to regulate and hold the food industry accountable, to encourage behavioural changes in the population and to improve access to nutritious food through social protection. Finally, it is crucial to recognize

[1] The Special Rapporteur intends to dedicate a future report to the effects of climate change on nutrition.

[2] International Food Policy Research Institute, *Global Nutrition Report 2016: From Promise to Impact — Ending Malnutrition by 2030* (Washington, D.C., 2016), p. xviii.

that malnutrition will continue to persist, unless a coordinated effort is made to shift from unsustainable industrial food systems to ones that are "nutrition sensitive".

5. The Special Rapporteur wishes to acknowledge the important contributions made to this topic by the former Special Rapporteur on the right to food and the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in their respective reports on the right to an adequate diet (A/HRC/19/59) and on unhealthy foods, non-communicable diseases and the right to health (A/HRC/26/31).

A. Malnutrition in all its forms

6. Malnutrition includes undernutrition, micronutrient deficiency and conditions associated with excess intake and nutritional imbalance. Undernutrition is a consequence of consuming too few essential nutrients, caused by either insufficient food intake or repeated infectious diseases. The most basic kind of undernutrition is protein energy malnutrition, which in its acute form leads to wasting. Identifying wasting in children is crucial because the condition is reversible, if appropriately addressed. In its chronic form, it is caused by sustained poor dietary intake or repeated infections during the first 1,000 days of a child's life and can lead to stunting. Stunting is irreversible and leads to shortness in stature, immediate and long-term morbidity and mortality and problems with cognitive functioning.[3]

7. Micronutrient deficiency describes a condition in which there is a lack or shortage of vitamins and minerals. Also referred to as "hidden hunger", it increases vulnerability to infection, birth defects and impaired development and can lead to premature death. For example, iron deficiency leads to anaemia, vitamin A deficiency weakens the immune system, and iodine deficiency interferes with brain development.[4]

8. "Unbalanced nutrition" occurs when the body is exposed to too much dietary energy and leads to overweight and obesity. It may result from eating too much or too many of the wrong things, as well as insufficient exercise, and can lead to an increased risk of heart disease, hypertension, diabetes and diet-related cancers.[5]

9. Traditionally, undernutrition and "hidden hunger" were considered specific to the developing world, while obesity was commonly perceived to mostly affect developed countries. It is now recognized that different forms of malnutrition coexist within most countries. Obesity rates are increasing in developing nations that are exposed to globalization while undergoing economic transition and urban migration. This is part of the global "nutrition transition", which is seeing a rise in consumption of energy-dense yet nutrient-poor foods, coupled with more sedentary lifestyles. As a consequence, many countries are now confronted with not only undernutrition but also rising rates of obesity.[6]

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[3] World Food Programme (WFP), "Hunger glossary", available from www.wfp.org/hunger/glossary; WFP, "Types of malnutrition", available from www.wfp.org/hunger/malnutrition/types.

[4] WFP, "Types of malnutrition".

[5] WHO, "Obesity and overweight", fact sheet, June 2016.

[6] Bryan L. McDonald, "Food as a key resource for security and stability: implications of changes in the global food system 1950-2000", *Penn State Journal of Law and International Affairs*, vol. 3, No. 2 (2015), pp. 42-55.

B. Nutrition-sensitive groups

1. Women

10. Women are more vulnerable to malnutrition than men because of different physiological requirements. Although women require 35 per cent less dietary energy per day than men, they need at least the same amount of nutrients. Consequently, a woman's ideal diet contains significantly more nutrients than those of a male counterpart.

11. Women who are lactating and pregnant require an even more nutrient-rich diet. To ensure the health of the fetus, a diet consisting of at least 20 per cent protein and higher levels of iron, folate and calcium is essential. Malnourished mothers are more likely to give birth to underweight babies, who in turn are 20 per cent more likely to die before the age of 5.[7] Diets that consist of less than 6 per cent protein in utero have been linked with many deficits, including decreased brain weight, obesity and impaired brain communication.[8]

2. Children

12. The first 1,000 days of a child's life determines a person's physical and intellectual development. Children receiving appropriate nutrition during this window are reportedly 10 times more likely to overcome life-threatening childhood diseases and likely to complete 4.6 additional schooling levels and to raise healthier children themselves.[9] The stages of a child's development are cumulative, and inadequate nutrition at an early stage can have lasting negative impacts, setting the child on a higher trajectory of risk of malnutrition throughout life. The Committee on the Rights of the Child, in its general comment No. 15, noted that understanding the life course was essential in order to appreciate how health problems in childhood affected public health in general.

13. WHO has concluded that malnutrition is the underlying contributing factor in about 45 per cent of all child deaths.[10] While the world has made progress in addressing undernutrition, for example by reducing stunting by more than a third since 1990, this progress is not fast enough. In 2014, there were 159 million stunted and 50 million wasted children in the world,[11] and by 2030, stunting is expected to affect 129 million children.[12]

14. At the same time, there were 41 million overweight children under the age of 5.[11] If this trend continues, 70 million infants and young children will be overweight or

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[7] WFP, "Women and hunger: 10 facts". Available from www.wfp.org/our-work/preventing-hunger/focus-women/women-hunger-facts.

[8] Food and Agriculture Organization of the United Nations (FAO), *The State of Food Insecurity in the World 2000: Food Insecurity. When People Live with Hunger and Fear Starvation* (Rome, 2000), p. 11.

[9] John Hoddinott and others, "Adult consequences of growth failure in early childhood", *The American Journal of Clinical Nutrition*, vol. 98, No. 5 (November 2013). See also 1,000 Days, "Why 1,000 days", available from http://thousanddays.org/the-issue/why-1000-days.

[10] WHO, "Children: reducing mortality", fact sheet, January 2016. Available from www.who.int/mediacentre/factsheets/fs178/en.

[11] United Nations Children's Fund (UNICEF), WHO and World Bank Group, "Levels and trends in child malnutrition: key findings of the 2015 edition", September 2015.

[12] Save the Children, *Unequal Portions: Ending Malnutrition for Every Last Child* (London, 2016), p. v.

obese by 2025.[13] Economic and cultural factors contribute to childhood obesity. Energy-dense foods are often more affordable and aggressively marketed towards children, while some cultures may associate higher weights in children with being healthy.

15. There are significant differences in malnutrition rates between countries. In 2014 almost all wasted children lived in Asia and Africa, while stunting affected predominantly Asia, as well as Africa. In 2013, it was estimated that close to 31 million overweight children lived in developing countries.[14]

3. Importance of breastfeeding

16. Breastfeeding is a powerful influence on child survival and development and prevention of child malnutrition. It provides optimal nutrition for young infants, reducing the incidence and severity of infectious diseases and contributing to obesity prevention. Breastfed babies are protected from illnesses through the mother's antibodies, while those who are not are exposed to increased chances of malnutrition, non-communicable diseases and suboptimal cognitive development. In addition, infant formula and other breast milk substitutes can cause poor growth or illness if water quality and hygiene standards are not met.

17. WHO recommends breastfeeding within one hour of birth and exclusive breastfeeding for the first six months of life. Nutritionally adequate and safe complementary foods should be introduced at 6 months of age, together with continued breastfeeding up to 2 years of age or beyond. Yet only about 36 per cent of infants between 0 and 6 months old are exclusively breastfed.[15] In high-income countries, fewer than one in five infants are breastfed for 12 months, and only two out of three children between 6 months and 2 years of age receive breast milk in low- and middle-income countries. These rates have not improved in two decades.[16] In addition, few children receive nutritionally adequate and safe complementary foods. A total of 823,000 children's lives could be saved yearly if all children between 0 and 23 months were optimally breastfed.[17] One of the major obstacles to breastfeeding is the misleading marketing by baby food companies of breast milk substitutes and the lack of corporate accountability for the adverse consequences of such abuses.

II. Underlying factors of malnutrition

A. Economic and social determinants

18. In the Rome Declaration on Nutrition, adopted in 2014, States recognized that the root causes of malnutrition were complex and multidimensional. They include

[13] WHO, "Facts and figures on childhood obesity", October 2014, available from www.who.int/end-childhood-obesity/facts/en; WHO, "Obesity and overweight" (see footnote 5).

[14] WHO, "WHO Global Strategy on Diet, Physical Activity and Health: childhood overweight and obesity". Available from www.who.int/dietphysicalactivity/childhood/en.

[15] WHO, "Infant and young child feeding", fact sheet No. 342, January 2016.

[16] WHO, "Maternal, newborn, child and adolescent health: increasing breastfeeding could save 800,000 children and US$ 300 billion every year", January 2016. Available from www.who.int/maternal_child_adolescent/news_events/news/2016/exclusive-breastfeeding/en.

[17] "Breastfeeding: achieving the new normal", *The Lancet*, vol. 387, No. 10017 (January 2016).

social, economic, political and cultural determinants. Poverty, social exclusion, gender inequality, low socioeconomic status and lack of control over productive resources, for example land-grabbing and seed patenting, are all major contributors to malnutrition. Similarly, malnutrition is aggravated by poor sanitation and the absence of safe drinking water and adequate housing, as well as a lack of education, health and social protection services.

19. Poverty and inequality are drivers of obesity and micronutrient deficiency, in addition to undernutrition. Low-income populations are particularly vulnerable to obesity. Processed foods tend to be highly accessible and relatively cheap and can be stored for long periods without spoiling. In the United States of America for instance, low-income neighbourhoods often lack food retailers that sell fruits, vegetables, whole grains and alternative low-fat options.[18] Unable to afford healthier food options, individuals may become overreliant on poor-quality foods, essentially being forced to choose between economic viability and nutrition and exposed to "double malnutrition".[19]

20. Women are responsible for much of the food cultivation and preparation of family meals, but they disproportionately lack access to adequate food and are more vulnerable to malnutrition. In its general recommendation No. 34, the Committee on the Elimination of Discrimination against Women noted that rural women were among those most exposed to malnutrition and hunger. Patriarchal norms contribute to gender inequality, with women facing systemic discrimination in accessing land and natural resources, decision-making, education and health-care services and experiencing increased vulnerability to violations of their sexual and reproductive rights. Such factors impede their ability to provide adequately nutritious foods for themselves and their families, leading to intergenerational cycles of malnutrition.[20]

B. Impact of food systems

21. In the Rome Declaration on Nutrition, it was acknowledged that current food systems were being increasingly challenged to provide adequate, safe, diversified and nutrient-rich food for all that contributed to healthy diets due to, inter alia, constraints posed by resource scarcity and environmental degradation, as well as by unsustainable production and consumption patterns, food losses and waste, and unbalanced distribution.

22. Food systems include production, processing, transport and consumption of food and are shaped by political, environmental, cultural, and socioeconomic factors. The industrial food system currently dominates the world. It focuses on increasing

[18] Lucy M. Candib, "Obesity and diabetes in vulnerable populations: reflection on proximal and distal causes", *Annals of Family Medicine*, vol. 5, No. 6 (November 2007); Food Research and Action Center, "Why low-income and food-insecure people are vulnerable to obesity", available from http://frac.org/initiatives/hunger-and-obesity/why-are-low-income-and-food-insecure-people-vulnerable-to-obesity.

[19] Michael Via, "The malnutrition of obesity: micronutrient deficiencies that promote diabetes", *ISRN Endocrinology*, vol. 2012 (2012).

[20] Mafalda Galdames Castro and Maria Daniela Nuñez Burbano de Lara, "Gender and food sovereignty: women as active subjects in the provision of food and nutrition", in *Right to Food and Nutrition Watch 2015: Peoples' Nutrition Is Not a Business* (2015); WFP, "Women and hunger" (see footnote 7); Save the Children, *State of the World's Mothers 2012: Nutrition in the First 1,000 Days* (2012), p. 11.

food production and maximizing efficiency at the lowest possible economic cost and relies on industrialized agriculture, including monocropping and factory farming, industrial food processing and mass distribution and marketing. Reflecting their affordability, availability and aggressive marketing strategies, industrialized food products constitute a very significant portion of the world's food sales.[21]

23. The impact of industrial food systems on nutrition and public health is alarming. Monocropping depends heavily on chemical inputs such as synthetic fertilizers and pesticides, while animals grown on factory farms are given growth hormones and antibiotics. The food processing industry uses preservatives, artificial colourants, additives and other chemicals in order to enhance the appearance, flavour and shelf life of food products. Ultraprocessed foods may also contain high levels of sodium, sugar, trans-fats and saturated fats, so that they are energy dense yet lacking in nutritional value.[22]

C. Unhealthy eating habits and non-communicable diseases

24. Diets based on highly processed "denatured" foods contribute to non-communicable diseases, which are shortening the human lifespan. According to WHO, such diseases are collectively responsible for almost 70 per cent of all deaths worldwide, and this is expected to rise to 75 per cent by 2020.[23] The consumption of unhealthy foods has been determined to be an important factor that increases the risk of non-communicable diseases, reinforcing the damage done by tobacco use, alcohol consumption and physical inactivity.[24]

25. Increases in unhealthy eating habits are outpacing increases in healthy ones throughout most of the world. While improvements in diet quality have been greatest in high-income nations, people living in many of the wealthiest countries still have among the poorest-quality diets in the world, because they have some of the highest consumption rates of unhealthy food. An alarming pattern is also emerging in formerly low-income countries as they become richer.[25]

26. Increased meat, sodium, sugar and fat consumption are causing diets to become less healthy. High sodium consumption raises blood pressure, raising the risks of heart disease and strokes, while excessive sugar consumption is associated with weight gain. While meat and other livestock products provide high-value protein and are sources of micronutrients, their overconsumption leads to excessive intakes of fat and sodium. As early as 2002, WHO recommended moderating processed meat consumption to reduce the risk of colorectal cancer and classified processed meat as carcinogenic to humans (Group 1). The Global Burden of Disease

[21] A/HRC/26/31, paras. 5-6.

[22] Marion Nestle, *Food Politics: How the Food Industry Influences Nutrition and Health*, revised ed. (Los Angeles, California, University of California Press, 2013); Rob Moodie and others, "Profits and pandemics: prevention of harmful effects of tobacco, alcohol, and ultraprocessed food and drink industries", *The Lancet*, vol. 381, No. 9867 (February 2013).

[23] Interview with Fumiaki Imamura, lead researcher of the study entitled "Dietary quality among men and women in 187 countries in 1990 and 2010: a systematic assessment" (2015).

[24] WHO, "Non-communicable diseases", fact sheet, January 2015.

[25] Fumiaki Imamura and others, "Dietary quality among men and women in 187 countries in 1990 and 2010: a systematic assessment", *The Lancet Global Health*, vol. 3, No. 3 (March 2015).

project estimates that approximately 34,000 cancer deaths per year worldwide are attributable to diets high in processed meat.[26]

27. Worldwide data suggest that average sodium and sugar consumption is well above minimal physiological needs. Processed food consumers unknowingly consume three to five times more sodium than required, which is particularly troubling when such foods target children. For example, a global study conducted in 2015 reviewed 387 popular children's meals and found sodium levels to be dangerously high.[27] Similarly, over the past 50 years, global sugar consumption has more than tripled, particularly in the form of sweetened beverages.[28]

28. There are also concerns that pesticides and additives in food may contain endocrine-disrupting chemicals. While this requires further research, it is suspected that such chemicals are associated with abnormal growth patterns and neurodevelopmental delays in children and may also increase susceptibility to non-communicable diseases.[29]

D. Trade liberalization and foreign direct investment

29. Trade liberalization and foreign direct investment (FDI) by transnational corporations in the processed food industry have played a large role in increasing the availability of ultraprocessed foods on the global market.[30] The removal of policies to protect domestic markets has strongly affected the increase in production of certain unhealthy foods, as well as their availability and cost. Countries that embrace market deregulation experience a faster increase in unhealthy food consumption.[31]

30. Trade liberalization has also allowed transnational corporations to gain influence on the global food supply chain and, in turn, on food systems. They have obtained control over agricultural production, processing, retailing, advertising and food imports and exports. By investing in technology used in the processed food industry, for example agrochemicals and hybrid seeds, extraction technology used in food processing, and additives to increase the shelf life of food products, large-scale food production achieves substantially lower costs while increasing profit margins.

31. FDI is playing a significant role in the "nutrition transition". The food processing industry is now the largest recipient of FDI, particularly in support of energy-dense, nutrient-poor foods. FDI allows companies to become transnational by purchasing or investing in "foreign affiliates" located in other countries, which then produce food for the domestic markets. This allows the foreign-based company to bypass import tariffs and lowers transportation and production costs. By flooding

[26] WHO, "Q&A on the carcinogenicity of the consumption of red meat and processed meat", October 2015. Available from www.who.int/features/qa/cancer-red-meat/en/.

[27] World Action on Salt and Health, "New international study reveals dangerously high levels of salt in children's meals and calls for global action now", 18 August 2015. Available from www.worldactiononsalt.com/less/surveys/2015/Children's%20Meals%20Survey/160652.html.

[28] Dylan Neel, "The sugar dilemma", *Harvard College Global Health Review* (October 2012).

[29] WHO, "Children's environmental health: endocrine disrupting chemicals" (2016). Available from www.who.int/ceh/risks/cehemerging2/en.

[30] Eddy Lee, "Trade liberalization and employment", DESA Working Paper No. 5 (New York, October 2005).

[31] A/HRC/26/31, para. 7.

markets with cheap refined grains, corn sweeteners and vegetable oil. FDI has become a driving force behind rising obesity rates in developing countries.[32]

E. Aggressive marketing

32. The level and effect of investment by the food industry in the marketing of unhealthy food products is startling. Persistent advertising campaigns, discount offers, exclusive contracts with food outlets and pricing and packaging strategies are all used to drive demand.

33. "Junk food" companies tend to use tactics similar to those used by tobacco companies in the 1980s, when science began linking smoking to serious health problems. Some companies even fund scientific research, manipulating results in support of their products, or add minimal amounts of healthy ingredients to enable them to present their products as "healthy".

34. Marketing strategies are particularly harmful when they target untapped markets in developing nations, a spillover from the "saturation" of markets in developed countries. The effect of introducing fast food on the diet quality of poorer populations is especially dangerous when there is a lack of knowledge or education and where individuals are vulnerable to manipulative marketing practices.[33] If left uncontrolled, undernutrition in lower-income countries will be rapidly eclipsed by obesity and non-communicable diseases, as is already the case in China, India and many middle-income countries.[23]

F. Product-based approaches to malnutrition

35. Nutrition policies should be multidimensional and avoid promoting isolated interventions to fight malnutrition, including "medicalized" and product-based approaches focusing on ready-to-use therapeutic foods. Such measures have been criticized as unsustainable "technical" solutions to social problems. Fortified foods are often too expensive for or unavailable to those most affected by micronutrient deficiencies. Such initiatives can also undermine dietary diversity, have a negative impact on healthy eating practices and adversely affect small-scale local producers by moving away from culturally appropriate, affordable and sustainable food sources. Excessive reliance on product-based solutions, for example nutrient pills and other methods of food fortification, also has adverse health implications, especially if they are highly processed. Even biofortification, which seeks to deliver

[32] Ibid., paras. 6-8; Corinna Hawkes, Delia Grace and Anne Marie Thow, "Trade liberalization, food, nutrition and health", in *Trade and Health: Towards Building a National Strategy*, Richard Smith and others, eds. (Geneva, WHO, 2015); Anna K. Sims, "Obesity prevention: assessing the role of State and non-State actors under international law", *Chicago Journal of International Law*, vol. 16, No. 1 (summer 2015); Anne Marie Thow and Benn McGrady, "Protecting policy space for public health nutrition in an era of international investment agreements", *Bulletin of the World Health Organization*, vol. 92, No. 2 (February 2014); Corinna Hawkes, "The role of foreign direct investment in the nutrition transition", *Public Health Nutrition*, vol. 8, No. 4 (June 2005); FAO, "Globalization of food systems in developing countries: impact on food security and nutrition", FAO Food and Nutrition Paper No. 83 (Rome, 2004).

[33] Judith Hodge, *The Future of Global Relations: Food Fortification — A "Techno-Fix" or a Sustainable Solution to Fight Hidden Hunger?* (Bonn, Deutsche Welthungerhilfe and Terre des Hommes Deutschland, 2014); A/HRC/26/31, para. 10.

naturally fortified foods, may turn out to be another "technical fix" for the problem of hidden hunger.[33]

36. Such initiatives are particularly concerning because the private sector can advocate food supplements so effectively.[34] For example, commercialization of such products as ready-to-use-therapeutic foods, branded with the logos of transnational companies, may also increase consumers' brand loyalty to a company's unhealthy soft drinks and snack foods.[33] Furthermore, many businesses involved in fortified products are the same multinationals violating the International Code of Marketing of Breast-milk Substitutes.

37. Nevertheless, fortification initiatives do make an important contribution to efforts to achieve food and nutrition security, provided they form part of a comprehensive strategy that addresses the social, economic and cultural determinants of food systems. Such solutions must always be critically evaluated and narrowly implemented to ensure that they are used only to provide temporary relief and do not replace long-term solutions, such as diversification of agriculture, or interfere with local production systems.[35]

III. Global nutrition governance

38. To respond to universal malnutrition challenges, a coordinated multisectoral policy response is needed at every level. This requires dialogue between all relevant sectors and actors, including nutritionists, development actors, civil society, donors, the private sector and government officials. Furthermore, it is important to establish accountability mechanisms to assess planning, budgeting and the results of nutrition-related interventions.[36]

39. It is also critical to address malnutrition in all its forms as one issue to avoid policy fragmentation. In a recent study among 139 low- and middle-income countries for example, only 39.6 per cent had nutrition policies that addressed all forms of malnutrition, despite facing the effects of a "nutrition transition".[37]

40. At the height of the food price crises in 2008, it was suggested that global governance of nutrition was dysfunctional.[38] Since then, significant initiatives have been undertaken at the global level. Examples include the Scaling Up Nutrition movement and two major campaigns of the Secretary-General: "Every woman, every child" and the Zero Hunger Challenge.

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[34] Flavio Luiz Schieck Valente, "The corporate capture of food and nutrition governance: a threat to human rights and peoples' sovereignty", in *Right to Food and Nutrition Watch 2015: Peoples' Nutrition Is Not a Business* (2015), pp. 17-18.

[35] Andrew Jones and Gebisa Ejeta, "A new global agenda for nutrition and health: the importance of agriculture and food systems", *Bulletin of the World Health Organization*, vol. 94, No. 3 (March 2016).

[36] Second International Conference on Nutrition, Chairs' summary of round table 3 (Governance and accountability for nutrition).

[37] Bruno F. Sunguya and others, "Strong nutrition governance is a key to addressing nutrition transition in low- and middle-income countries: review of countries' nutrition policies", *Nutrition Journal*, vol. 13, June 2014.

[38] *The Lancet Global Health*, "The international nutrition system: fragmented, dysfunctional and desperately in need of reform", press release, 16 January 2008.

A. Mapping the global nutrition governance

41. In 2011 the WHO Global Action Plan for the Prevention and Control of Non-Communicable Diseases initiated action to tackle malnutrition comprehensively, including unbalanced nutrition and obesity. In 2012, the World Health Assembly endorsed six global nutrition targets to improve maternal, infant and young child nutrition by 2025. Commitment to reach those targets was reaffirmed at the Second International Conference on Nutrition, held in Rome in 2014.

42. The Conference is considered a landmark event that brought together the global community to discuss nutrition, acknowledging malnutrition in all its forms. Its outcome document, the Rome Declaration on Nutrition, pledges 10 commitments to action, recognizing the importance of a life-cycle approach to preventing malnutrition, as well as empowering people to make informed food choices. States committed to increasing investment in nutrition and moving towards sustainable food systems. The Framework for Action adopted at the Conference recognizes that effective and coherent nutrition policies require adequate financing and investment, political commitment, systematic public monitoring and accountability processes. It also calls for collaboration across all systems, including food, health, trade, investment, education, social protection, water and sanitation and hygiene.

43. Leaders at the Conference also recognized the importance of integrating their political commitments with the post-2015 development agenda and of anchoring nutrition targets in the Sustainable Development Goals.[39] The Goals have a universal character and cannot be achieved without special attention to nutrition. While Goal 2 explicitly refers to "nutrition" and Goal 3 to non-communicable diseases, nutrition is arguably interwoven within all 17 Goals, as well as 50 indicators.[40]

44. As suggested, the root causes of malnutrition go beyond a lack of sufficient and adequate food, and to combat them requires actions similar to those embedded in a variety of interrelated development goals, including those pertaining to health, access to resources, environmental degradation, climate change and women's empowerment. The Sustainable Development Goals cannot be achieved without special attention to nutrition, and vice versa.

45. On 1 April 2016, following the recommendations of the Conference, the General Assembly proclaimed 2016-2025 the United Nations Decade of Action on Nutrition. The Decade presents a unique opportunity to centralize globally agreed targets, align actors around implementation and address the shortcomings identified in the current nutrition governance system.

B. Shortcomings of the global governance system

46. While ambitious targets have been set to ensure global governance of nutrition, much more is needed to live up to the challenge of sustainability while providing each person with enough food to live a healthy and productive life, as

[39] Second International Conference on Nutrition, Chairs' summary of round table 1 (Nutrition in the post-2015 development agenda).

[40] Standing Committee on Nutrition, "Nutrition and the post-2015 Sustainable Development Goals", policy brief, Geneva, November 2014.

targeted by the Sustainable Development Goals. Several shortcomings within the existing system should be addressed.

47. Despite the potential success of the Goals, nutrition is mentioned in only 1 of the 169 targets, and overweight and obesity are not mentioned. More importantly, whether the Sustainable Development Goal targets have the innovation necessary to ensure a successful shift towards sustainable food systems and provide the framework for global governance of agriculture, food, nutrition and health seems doubtful.[41] In addition, some targets lack the focus necessary to enable effective implementation, or they contribute to several Goals, thereby creating possible conflicts. Action to meet one target could have unintended consequences on others if they are pursued separately. Moreover, the monitoring mechanism for the Goals based on voluntary national reporting and review mechanisms, through the high-level political forum on sustainable development of the General Assembly, may not be effective enough to reach agreed targets. Finally, a major shortcoming is the fact that the human right to adequate food is not specifically articulated in the Goals.

48. Ensuring adequate financing is also a struggle. For example, to reach the World Health Assembly goal on stunting by 2025, a doubling of government funding and a quadrupling of donor spending is necessary.[42] Technical knowledge, political will and efficient accountability systems are needed to reach existing nutrition goals.

49. There are concerns that the accountability system of the Rome Declaration on Nutrition is unclear and that its policies are fragmented. Owing to its multisectoral nature, as well as the long-term impact of malnutrition on human development and invisibility of some of its consequences, accountability is complex. As articulated in Sustainable Development Goal 17, ensuring effective accountability requires a clear understanding of data collection as well as systematic tracking systems at both the country and global levels. The *Global Nutrition Report 2016* attempts to fill the gap by providing a data tracking system, drawing data from United Nations agencies. Although this might lead to criticism owing to its connection with the nutrition industry, it is arguably the most independent mechanism to date.

C. Private sector involvement and conflict of interest

50. Today's nutrition governance also lacks effective mechanisms to regulate private sector involvement in nutrition programmes. The corporate influence on national and international food and nutrition policy spaces has become increasingly visible as programmes seek multi-stakeholder arrangements. Both the Sustainable Development Goals and the Second International Conference on Nutrition mention the importance of "multi-stakeholder partnerships" with private sector participation.

51. While recognizing that companies play a big role in fighting malnutrition, there is a danger in giving corporations unprecedented access to policymaking

[41] Corinna Hawkes and Barry M. Popkin, "Can the Sustainable Development Goals reduce the burden of nutrition-related non-communicable diseases without truly addressing major food system reforms?", *BMC Medicine*, vol. 13, June 2015.

[42] Lawrence Haddad, "The global governance of nutrition: why it matters", 25 February 2016. Available from www.developmenthorizons.com/2016/02/the-global-governance-of-nutrition-why.html.

processes, which may produce conflicts of interest at several levels unless governed properly. It has been questioned whether nutrition policies can deliver both short-term financial returns for companies and long-term social and health benefits that help to effectively tackle global malnutrition challenges.[43] Adequate safeguards are thus needed to ensure that the private sector does not use its position as a "stakeholder" to influence public policymaking spaces on nutrition to promote commercial objectives.[43]

1. Public-private partnerships

52. The private sector has significantly exerted its influence over nutrition governance through public-private partnerships, which may blur the line between public interest and financial gain. Involvement by the private sector may be driven by direct financial returns, such as tax breaks, market penetration and positive public relations, as well as increased corporate influence in nutritional policymaking.

53. Limited guidelines exist on how to manage such partnerships. They may be useful where public sector solutions are not available or effective, and the private sector may have an important role to play in driving innovation to reduce malnutrition. To avoid conflicts of interest, it is important to assess whether the private sector's activities are compatible with the goal of reducing malnutrition. Actions motivated by profit seeking alone should be discouraged. A memorandum of understanding or legal contract that lays out specifies objectives to avoid and resolve conflict of interest and ensure effective and transparent monitoring can help to manage such partnerships.[44]

54. In 2010, the Scaling Up Nutrition movement, a new type of multi-stakeholder and multisectoral partnership, was launched by the Secretary-General together with donors, businesses, researchers, Governments and civil society to provide support to 57 Member States to improve food policies during the first 1,000 days of child feeding. While the movement's goals are welcomed and have seen success in reducing child malnutrition in several countries, especially in increased funding, capacity-building, advocacy and establishing a civil society network and coordinating with the United Nations, the initiative has also been subject to criticism. As a self-described "movement", it has no accountability to the United Nations or other intergovernmental body or process. While business partnerships are promoted, there is no careful management of corporate involvement to ensure that it is confined to implementation, without influencing public health and nutrition policymaking. Conflicts of interest have also been identified where businesses involved in the initiative were simultaneously marketing foods leading to obesity and non-communicable diseases. While efforts were recently made, for example by excluding infant formula manufacturers that violate the International Code of Marketing of Breast-milk Substitutes, it remains unclear as to how the initiative prevents companies from gaining improper access to markets and policymaking, or how violations are detected and evaluated.[44]

[43] Vivica I. Kraak and others, "Balancing the benefits and risks of public-private partnerships to address the global double burden of malnutrition", *Public Health Nutrition*, vol. 15, No. 3 (March 2012).

[44] John Hoddinott, Stuart Gillespie and Sivan Yosef, "Public-private partnerships and the reduction of undernutrition in developing countries", IFPRI Discussion Paper No. 01487 (Washington, D.C., International Food Policy Research Institute, 2015).

2. Philanthropic organizations

55. Increasingly, philanthropic foundations are investing in global nutrition initiatives. While donations are difficult to track, such private institutions are generally larger than many Governments and have the ability to influence nutrition policies without the concomitant obligations to ensure respect for human rights.[45] Recognizing the financial constraints faced by many countries, it is imperative to establish a monitoring and accountability system to ensure that private foundations operate within the human rights system, rather than fulfilling this responsibility on a voluntary basis.

56. The Global Alliance for Improved Nutrition is one of the leading private networks focusing on malnutrition reduction, mainly through fortification, supported largely by the Bill and Melinda Gates Foundation. Several allegations of conflict of interest have been made against the Alliance. In particular, organizations working to address infant malnutrition questioned whether its work was motivated primarily by efforts to open new markets for its members. An effective, independent evaluation mechanism is needed for balancing private sector involvement in nutrition policies.

IV. Human rights approach and State responsibility

A. Normative foundation of human rights

57. International law instruments provide a normative and legal foundation for the human right to adequate food and nutrition. Article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights recognize the right to adequate food and the fundamental right of everyone to be free from hunger. Dealing with global nutrition challenges through a rights-based perspective is not only desirable but also obligatory, given that nutrition is an inherent element of the right to food. In its general comment No. 12, the Committee on Economic, Social and Cultural Rights interpreted the right to food as obliging every State to "ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger".

58. The clear inclusion of a nutrition dimension to the right to food confirms the latter's interconnection with the right to health. In fact, nutrition is considered as the vital link between the right to health and the right to food and ensures that the human rights framework promotes both rights.[46] In its general comment No. 14, the Committee on Economic, Cultural and Social Rights affirmed that the right to health placed a core obligation on States to "ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone". This implies that if nutritious food is not readily available, accessible or

[45] David McCoy, Sudeep Chand and Devi Sridhar, "Global health funding: how much, where it comes from and where it goes", *Health Policy and Planning*, vol. 24, No. 6 (November 2009).

[46] Emilie K. Aguirre, "The importance of the right to food for achieving global health", *Global Health Governance*, vol. IX, No. 1 (spring/fall 2015).

affordable, the enjoyment of the highest attainable standard of physical and mental health cannot be met.[47]

59. The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security also recognize that State obligations to ensure the right to food include responsibilities towards ensuring standards of nutrition and health. In the Guidelines, it is noted that "States should take measures to maintain, adapt or strengthen dietary diversity and healthy eating habits and food preparation, as well as feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply do not negatively affect dietary composition and intake".[48]

60. A relatively new proposal, the draft Framework Convention on Global Health, suggests that the right to adequate food should be interpreted to mean the right to a standard of nutritional quality and not just the right to a caloric minimum.[46]

61. Several international conferences under United Nations auspices have consolidated international law by recognizing nutrition and health within the context of the human right to food. As early as 1992, the World Declaration on Nutrition of the First International Conference on Nutrition referred to the Universal Declaration of Human Rights and the right to food, with States committing to ensure "sustained nutritional well-being for all people". The Rome Declaration on World Food Security, adopted in 1996, reiterated "the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger". This was reaffirmed at the Second International Conference on Nutrition, in 2014.

62. While nutrition support in the past was often considered charitable action, it is increasingly regarded as a result of a failure to protect an essential human right, attributed largely to a lack of sufficient nutrition governance and accountability. Applying a human rights-based approach to nutrition facilitates the implementation of procedural rights, such as participation, accountability, non-discrimination and transparency. The Second International Conference on Nutrition confirmed that embedding nutrition in a human rights agenda made issues of governance and accountability central to effective implementation.

63. Access to nutritious food is often a key indicator of socioeconomic inequalities. Discussing nutrition within a rights-based framework is critical to ensuring that marginalized and vulnerable populations disproportionately affected by malnutrition are guaranteed a certain level of nutrition and health, rather than a minimum number of calories needed for survival. Such recognition is crucial for the reduction of nutritional and health inequalities around the world.[46]

64. Children and pregnant and lactating women enjoy even further protections. The Convention on the Rights of the Child confirms that, to ensure the full implementation of a child's right to enjoy the highest attainable standard of health, States must take appropriate measures to combat disease and malnutrition through, inter alia, the provision of "adequate nutritious foods" (art. 24 (2) (c)) and that in case of need they must provide material assistance and support programmes, including with regard to nutrition (art. 27 (3)). The Convention also calls for the protection and promotion of exclusive breastfeeding for infants up to 6 months of

[47] Sims, "Obesity prevention" (see footnote 32).

[48] Guideline 10.1.

age, and for breastfeeding to continue alongside appropriate complementary foods preferably until 2 years of age.[49]

65. The protection and promotion of breastfeeding is also enshrined in the International Code of Marketing of Breast-milk Substitutes, adopted by the World Health Assembly in 1981. The Global Strategy for Infant and Young Child Feeding, adopted in 2002, sets out the obligations of States to develop, implement, monitor and evaluate comprehensive national policies addressing infant and young child feeding, accompanied by a detailed action plan.

66. Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women obliges States to ensure appropriate services during pregnancy and lactation. Unfortunately, it fails to protect a woman's individual right to adequate food and nutrition beyond the parameters of pregnancy and breastfeeding. Considering their increased sensitivity to malnutrition, it is vitally important to ensure this right.

B. Corporate responsibility

67. Placing nutrition governance within the human rights framework also underlines the responsibility of corporations in the food and nutrition industry to respect human rights and to contribute to equitable access to nutritious foods. Such responsibility is implied in the Universal Declaration of Human Rights, which underlines that "everyone has duties to the community" (art. 29) and that groups and persons must refrain from activities causing encroachment on the rights enshrined in the Declaration (art. 30).

68. The Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, formally recognize the responsibility of enterprises to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved.[50] Logically, this responsibility includes the adverse impacts of the food industry with respect to the right to adequate food.

69. In the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age (A/HRC/27/31) Member States are urged to regulate private actors over which they exercise control, including producers and marketers of breast milk substitutes and other relevant companies (para. 70 (g)). The Committee on the Rights of the Child, in its general comment No. 15, also calls upon private companies to comply with the International Code of Marketing of Breast-milk Substitutes and relevant World Health Assembly resolutions. In its most recent resolution on ending inappropriate promotion of foods for infants and young children, adopted in May 2016, the World Health Assembly called upon manufacturers and distributors of foods for infants and young children to end all forms of inappropriate promotion.

[49] See general comment No. 15 of the Committee on the Rights of the Child. Through their mention in that general comment, both the Global Strategy for Infant and Young Child Feeding and the International Code of Marketing of Breast-milk Substitutes have been integrated into the international human rights system.

[50] Principle 11.

70. Those efforts indicate that business has a responsibility to protect the right to adequate food and nutrition, especially with regard to children. Yet in practice it can be difficult to hold companies to account, especially in cross-border cases involving complex corporate structures. In this regard, home States have extraterritorial obligations to seek to prevent and address human rights abuses abroad by companies domiciled within their jurisdictions. For example, if a host country is unwilling to hold a company responsible, or even provides tax-free or other incentives, the home country of the enterprise should exercise extraterritorial responsibility.

71. The Guiding Principles underline that the responsibility of companies to respect human rights exists independently of the abilities and/or willingness of States to fulfil human rights obligations, and hence to prevent them from taking advantage of weak legislative environments. However, ensuring accountability and access to effective remedies for victims remains a major challenge.[51]

72. While international human rights law lays the foundations for responsible corporate behaviour, food corporations have vehemently opposed calls to regulate marketing. Instead, many have promoted voluntary commitments on labelling and advertising or have sponsored nutrition and health education programmes as part of their "corporate social responsibility".[52] The latter is particularly concerning, blurring the lines between education and marketing, and potentially allowing companies to disseminate misleading information.[53]

73. Recent initiatives, such as a 2014 high-level commission on ending childhood obesity and recommendations towards a global convention to protect and promote healthy diets by the World Obesity Federation and Consumers International, as well as Global Nutrition Reports, indicate the need for stronger accountability mechanisms at the national level, considering that voluntary corporate initiatives are proving ineffective.

C. State responsibility to ensure monitoring, accountability and transparency

74. In its general comment No. 12, the Committee on Economic, Social and Cultural Rights views the right to adequate food to imply food "free from adverse substances" (para. 8), which "sets requirements for food safety and for a range of protective measures by both public and private means ... at different stages throughout the food chain" (para. 10). Considering the adverse health impacts, "food safety" should be interpreted to include the nutritional value of food products.

75. The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security also encourage States to take steps to prevent overconsumption and unbalanced diets that may lead to malnutrition, obesity and degenerative diseases.[54] Many States are taking steps in

[51] See also the report of the United Nations High Commissioner for Human Rights on improving accountability and access to remedy for victims of business-related human rights abuse (A/HRC/32/19).

[52] Patti Rundall, "The 'business of malnutrition': the perfect public relations cover for Big Food", in *Right to Food and Nutrition Watch 2015: People's Nutrition Is Not a Business* (2015), p. 23.

[53] Baby Milk Action, "Tackling obesity: how companies use education to build 'trust'".

[54] Guideline 10.2.

the right direction to regulate the food industry, including through labelling initiatives, advertising restrictions and economic measures.

1. Regulatory measures

76. Nutrition labels allow people to make informed decisions on their food options and incentivizes food manufacturers to reformulate their products to target health-conscious consumers. Many countries have mandatory nutrient lists on pre-packaged foods, and some have gone further to implement creative schemes to alert consumers about foods that undermine their nutritional welfare. For example, Australia has adopted a voluntary "health star rating" that rates foods from least to most healthy; Chile has food labels with a "stop sign" warning message when calorie, saturated fat, sugar or sodium limits have been exceeded; and Ecuador requires packaged foods to carry a "traffic light" label indicating fats, sugar and salt by colour. Denmark, Iceland, Norway and Sweden use a voluntary keyhole-shaped logo to flag products containing less fat, salt and sugar, while Finland uses a heart-shaped symbol to indicate which products are better options in terms of sodium content.

77. Some countries, such as Australia, the Republic of Korea and the United States, require restaurant chains to include information on energy and nutrient content or warning labels on sodium content. Clear standards are also needed on the use of nutrition and health claims to prevent consumers from being misled. In the United States, public demand for increased transparency has led to several attempts to implement mandatory-labelling schemes for genetically engineered foods.

78. Although WHO has recommended that the private sector adopt evidence-based "responsible marketing", and despite some positive initiatives as described above, ensuring informative labelling is still an uphill battle for nutrition and health advocates.[55]

79. Advertisements influence people's food preferences and habits. Recognizing that children are especially exposed to aggressive marketing and promotion strategies by food and beverage companies, some States prohibit media advertising to children for certain "restricted" food and drink products. In Chile, for example, where children form more than 20 per cent of the audience, mandatory regulations restrict advertising to children under 14, while Taiwan Province of China bans the advertising of restricted foods on channels dedicated to children, levying fines for violations of its regulations. Brazil imposes strict regulations, prohibiting any "abusive publicity" and strategies that appeal directly to children and adolescents. In practice, however, there seem to be many difficulties in implementing such restrictions.

80. To encourage increased consumption of healthy foods by children, some countries have implemented vegetable and fruit programmes at schools, imposed mandatory prohibitions on serving foods classified as unhealthy, and banned vending machines. Poland recently banned the sale of foods high in sugar, salt and fat in all schools, and Mexico introduced a similar ban in 2010. Other initiatives include implementing "green food zones" prohibiting the sale of fast food within the

[55] Sims, "Obesity prevention" (see footnote 32); George Kimbrell and Aurora Paulson, "The constitutionality of State-mandated labelling for genetically engineered foods: a definitive defence", *Vermont Law Review*, vol. 39, No. 2 (winter 2014).

immediate vicinity of schools and banning advertising and promotion of foods that do not meet certain nutrition standards.

2. Breast milk substitutes and baby food

81. Global sales of breast milk substitutes total $44.8 billion and are expected to rise to $70.6 billion by 2019.[56] The International Code of Marketing of Breast-milk Substitutes places restrictions on the sale of such substitutes, through prohibiting public advertising, provision of free samples or promotion in health-care facilities. It also requires all information on artificial feeding to explain the benefits of breastfeeding and the hazards associated with artificial feeding. Although some progress has been achieved, violations of the Code are widespread and only 39 countries have laws enacting all provisions.

82. Since 2011, Armenia, Bolivia (Plurinational State of), Kenya, Kuwait, South Africa and Viet Nam have adopted comprehensive measures to incorporate all of the International Code provisions, sometimes even going beyond its minimum standards. The proportion of countries with comprehensive legislation on the Code is highest in South-East Asia, followed by Africa and the Eastern Mediterranean, while the Americas, Western Pacific and European regions have the lowest proportions.

83. Much remains to be done to end the inappropriate marketing of breast milk substitutes, and countries are encouraged to adopt, amend and strengthen legal measures in line with the International Code and relevant World Health Assembly resolutions. In particular, it is necessary to ensure that national legislation adequately covers substitute products aimed at children older than 12 months.

3. Economic measures

84. Taxes on poor nutritional foods can also deter consumers. Norway has taxed sugar, chocolate and sugary drinks since 1981, and many countries have followed suit. Denmark taxes food containing saturated fat, Hungary imposes a "public health tax" on the salt, sugar and caffeine content of various categories of ready-to-eat foods, and in the United States, 33 states have issued some form of food tax. In the Navajo Nation for instance, a tax is levied on food items with minimal to no nutritional value.

85. Various countries have also taxed beverages that contain high levels of sugar or other sweeteners. While in some countries the revenue goes directly to the general budget or to the health sector, others use such funds for specific nutrition- and health-related projects. For example, Mexico uses revenue to finance programmes addressing malnutrition and obesity-related diseases, and the Navajo Nation earmarks tax revenues for such projects as farming, healthy convenience stores and health classes.

86. Raising tariffs on imported foods and drinks classified as "unhealthy" are another tool, used for example by the Cook Islands, Fiji, French Polynesia, Nauru and Samoa. Others have lowered import tariffs on "healthy" foods that are not procured locally. Targeted subsidies or price discounts can also enable people on

[56] WHO, UNICEF and International Baby Food Action Network, *Marketing of Breast-Milk Substitutes: National Implementation of the International Code — Status Report 2016* (Geneva, 2016), p. 7.

low incomes to afford healthier food options. In the United Kingdom of Great Britain and Northern Ireland, for example, low-income pregnant women and families receive vouchers to buy dairy and vegetables, and in the United States, the Supplemental Nutrition Assistance Program gives incentives to spend on fruits and vegetables.

87. Taxation, import restrictions, subsidies and labelling initiatives may, however, be scrutinized for violation of trade agreements. They may also give rise to debates as to whether such governance tools intrude unreasonably on personal and individual freedoms and differing cultural understandings of "nutrition".[57]

4. Behavioural changes, education and dietary guidelines

88. States have recognized the importance of nutrition education, making it mandatory within school curricula or providing education programmes targeting cities, workplaces and food providers. Some have initiated campaigns for healthier diets, provide nutrition advice for at-risk individuals or publish food-based dietary guidelines recommending a balanced diet. Dietary guidelines should guide not only consumer choices but also policy choices. Such initiatives should be culturally sensitive and based on scientific evidence. Brazil's revised dietary guidelines of 2014 are a good example, as they are comprehensive, take cultural dimensions into account and promote the consumption of minimally processed foods while encouraging sustainable food systems.

5. Influencing the food supply

89. Some countries have understood the need for more systemic changes to improve the nutritional quality of food products available on the market. Overall improvements can be achieved through dialogue with the food industry to reformulate food products by setting targets to reduce salt and fats, eliminate trans-fats and make products less energy dense, or put a cap on portion size. Good examples include schemes to collaborate with food suppliers to provide healthier ingredients for public entities serving food, or requirements that a certain percentage of food products be sourced from agroecological farms. Other initiatives focus on improving the accessibility of healthy foods at retail outlets, for example by providing incentives to set up "healthy" food enterprises in deprived neighbourhoods or placing planning restrictions on fast food outlets.

90. While the above-mentioned examples are positive indications, national policies are often fragmented, and it is crucial to go further to encourage States to implement comprehensive plans to combat malnutrition in all its forms.

91. Several helpful initiatives exist to assist policymakers in ensuring nutrition accountability. For example, the WHO global database on the implementation of nutrition action set forth national policy actions and strategies to eliminate all forms of malnutrition. Similarly, the International Network for Food and Obesity/Non-Communicable Diseases Research, Monitoring and Action Support (INFORMAS), an international collaboration of universities and global non-governmental organizations, seeks to monitor, benchmark and support actions

[57] David Adam Friedman, "Public health regulation and the limits of paternalism", *Connecticut Law Review*, vol. 46, No. 5 (July 2014); Katherine Pratt, "The limits of anti-obesity public heath paternalism: another view", *Connecticut Law Review*, vol. 46, No. 5 (July 2014).

to create healthy food environments and reduce diet-related non-communicable diseases. It uses the healthy food environment policy index to monitor government actions. While currently at the pilot-testing stage, such tools will assist civil society in holding Governments and the food industry to greater account for creating healthier food environments.[58] The Nourishing Framework, created by World Cancer Research Fund International, is an interactive tool to promote healthy diets, allowing a selection and tailoring of policy options for different populations.[59] Finally, WHO regional offices have developed regional nutrient profiling models, which can be used in policymaking to improve the overall nutritional quality of diets.

6. Making food systems "nutrition sensitive"

92. **To promote meaningful change, actions must also be directed at the food system level to make it more "nutrition sensitive". It is imperative that global food systems move away from agro-industrial production methods that are responsible for dietary monotony and reliance on ultraprocessed food and beverages towards a system that supports food sovereignty, small-scale producers and local markets, based on ecological balance, agro-biodiversity and traditional practices. Food sovereignty allows peoples to define their own policies and strategies for sustainable production, distribution and consumption of food. Globally, the majority of food is supplied by local farmers. Therefore, efforts to combat malnutrition should support smallholder farmers and promote nutrition-sensitive production. Agroecology ensures food and nutrition security without compromising the economic, social and environmental needs of future generations.[60] It focuses on maintaining productive agriculture that sustains yields and optimizes the use of local resources while minimizing the negative environmental and socioeconomic impacts of modern technologies.[61] It is imperative to support ambitious research initiatives to establish the scientific basis for claiming that agroecology is capable of nutrition-sensitive production while promoting local livelihoods and the environment.**

V. Conclusion and recommendations

93. **To successfully combat universal malnutrition in all its forms, including the negative effects of the "nutrition transition", the first step is recognizing nutrition as an essential component of the human right to adequate food, reinforced by monitoring, accountability and transparency mechanisms.**

94. **The United Nations Decade of Action on Nutrition, proclaimed in April 2016, could be an effective vehicle to strengthen implementation of existing nutrition commitments. However, the United Nations and the international community need to address existing flaws within the global governance system, especially the weakness of implementation and accountability. The General Assembly has called upon the World Health Organization and the Food and**

[58] See http://globalnutritionreport.org/files/2014/11/gnr14_pn4g_13swinburn.pdf.
[59] See www.wcrf.org/int/policy/nourishing-framework.
[60] High-level Panel of Experts on Food Security and Nutrition, "Food losses and waste in the context of sustainable food systems", June 2014, A/HRC/16/49.
[61] See A/70/287, sect. IX.

Agriculture Organization of the United Nations to lead the implementation of the Decade, recommending that multi-stakeholder platforms such as the Committee on World Food Security and the Standing Committee on Nutrition be entrusted with coordinating oversight. Recognizing legitimate concerns about the influence of private interests on nutrition policymaking, a participatory process is particularly important. This makes it imperative to protect open spaces to ensure that policy formulation is consistent with the public good, which may require the empowerment of civil society.

95. Such a system must include safeguards against potential negative influences of market forces and powerful economic actors in the food and nutrition industries with respect to the human right to adequate food and nutrition, and promoting a system to manage conflicts of interest that arise from private sector involvement in nutrition initiatives.

96. While certain States have taken encouraging steps, most national systems to combat malnutrition are fragmented and lack effective action, evaluation and accountability mechanisms. It is imperative that responses move away from isolated interventions and "medicalized" approaches to fighting malnutrition. In line with their obligations under the international human rights system, States must acknowledge the underlying causes of malnutrition and develop multisectoral approaches to coordinate nutrition policies with health, housing, water and sanitation, social protection, poverty and inequality reduction initiatives. Moreover, it must be recognized that, to effectively combat malnutrition, women's rights should be at the forefront.

97. Recognizing that industry self-regulation is ineffective, Governments should impose strong regulatory systems to ensure that the food industry does not violate citizens' human rights to adequate food and nutrition. It is recognized, however, that such efforts may face formidable resistance from a food industry seeking to protect its economic interests.

98. A holistic approach to nutrition requires national policymakers to create an environment conducive to nutritious, healthy diets, including through education, and dietary guidelines. Finally, a comprehensive approach should encourage adjustments in food supply and changes in food systems to increase the availability and accessibility of healthier food that is both sustainable and nutrition sensitive.

99. With a view to respecting, protecting and fulfilling the right to adequate food and nutrition, the Special Rapporteur recommends that:

(a) Member States embrace the United Nations Decade of Action on Nutrition as an opportunity to achieve ambitious nutrition targets and ensuring the right of every individual to adequate food and nutrition, especially the people who most need it. To this end, United Nations agencies and programmes should establish coordinated, effective monitoring and accountability mechanisms to implement the multitude of existing nutrition targets in ways that are coherent, harmonized, mutually reinforcing and overcoming gaps, together with clear timelines, funding and indicators to assess progress;

(b) The Committee on World Food Security, as recommended by the General Assembly, ensure the participation of all partners during the Decade, in particular rights holders and representatives of vulnerable groups,

Affirmative measures should be adopted to ensure a "level playing field" allowing civil society to play active roles in discussions and negotiations;

(c) International regulations be implemented to curb the unchecked actions of powerful economic actors that have lately been flooding global markets with junk food. In this regard, negotiations within the Human Rights Council to establish a legally binding instrument to regulate the activities of transnational corporations are greatly welcomed;

(d) The Guiding Principles on Business and Human Rights be implemented to ensure corporate responsibility of the food and nutrition industry and enforce the rights of victims to redress human rights violations, including cross-border cases;

(e) Internationally agreed guidelines on how to manage public-private partnership and monitor accountability be established, based on independent assessments of the impact of commercial sector engagement in nutrition;

(f) International trade and investment agreements be re-evaluated to ensure that they do not undermine health and nutrition policies. For example, food taxes, tariffs and other market restrictions or incentives that justifiably form part of national nutrition policies should be exempt from World Trade Organization rules and should not lead to penalties for violating trade agreements;

(g) States be encouraged to use existing tools established by the United Nations, as well as by non-governmental organizations and academic networks, to create a "national master plan for nutrition" with a time frame and budgetary targets specifically tailored to meet domestic needs;

(h) States ensure the political and financial commitments needed to shift from current industrial agricultural systems to nutrition-sensitive agroecology that is healthy for people and sustainable for the planet;

(i) States adopt an initiative similar to the WHO Framework Convention on Tobacco Control to regulate the food and beverage industry and protect individuals from the negative health and nutrition effects of highly processed foods;

(j) Recognizing the particular vulnerability of women to malnutrition, the international human rights framework protect women's right to adequate food and nutrition, beyond pregnancy and breastfeeding;

(k) The empowerment of women be firmly embedded within nutrition strategies, for example by providing paid maternity leave, social recognition of unpaid work, prevention of early and forced marriages and protection of women's sexual and reproductive rights;

(l) All States incorporate the International Code of Marketing of Breast-milk Substitutes in its entirety into their legal systems and ensure adequate monitoring to ensure implementation;

(m) The Human Rights Council endorse the WHO guidance on ending the inappropriate promotion of foods for infants and young children, presented at the World Health Assembly in May 2016.